

This checklist is a starting point for discussing business transition terms. These talking points will help a business owner identify the goals, needs, and commitment levels of the owners, as well as the goals and needs of the business itself. Discussing these matters will help you identify planning opportunities and help minimize the risk of future business disruption.

- What type of business is this?
- Who manages the business? Are there any non-owners on the management team? Do all of the owners want to participate in management?
- Are there procedures in place to help ensure continuity of management during a transition? Do these procedures take into account key employees that are not owners?
- How do the owners want to address employment issues, such as:
  - Compensation
  - Noncompetition agreements
  - Nondisclosure agreement
  - Nonsolicitation agreements
  - Protection of intellectual property and intangible assets
- Do any key employees have stock options, profits interests, or any instrument convertible to equity?
- Are there alternative dispute resolution provisions in place for resolving disputes between the owners?
- Is there a possibility of deadlock (e.g., 50/50 ownership)? How do the owners want to resolve a potential deadlock?
- What are the triggering events for a buyout of an owner's interest?
  - Death
  - Disability
  - Retirement
  - Termination of employment
  - Sale to a non-owner (right of first refusal)
  - Marital dissolution
  - Deadlock
  - Expulsion of an owner

- If a triggering event occurs, will the buyout be mandatory or optional?
- If a triggering event occurs, how will the value of an interest be determined? By formula? Appraised value? Predetermined price? Other method?
- If a triggering event occurs, how will payment be made for the departing owner's interest? May a promissory note be used to pay over time? What is the down payment, interest rate, and term of the note? Is the note secured or unsecured?
- Will the parties use life insurance to fund the buyout obligation? Who will own the insurance policies? Who will be the beneficiaries?
- What are the tax consequences of the buyout? Are there any gift and estate tax consequences? Will there be any basis step-up? Will receipt be taxable? If so, will it be capital gains or ordinary income?
- Are there any professional licensing considerations to ensure that the equity passes to a qualified owner?
- Do the owners want to restrict the transfer of ownership interests? Are all transfers prohibited unless approved by the other owners? Or are certain transfers (such as to family or to a revocable trust) permitted without owner approval?
- If the business is taxed as an S corporation, do the owners understand the importance of including provisions that restrict the transfer of equity to ensure that the business does not become disqualified from Subchapter S status?
- Do the owners want to restrict issuing new equity?
- Do the owners want to give preemptive rights when issuing new equity?
- Do the owners want to provide drag-along rights to facilitate a sale of the entire business to a third party?
- Do the owners want to provide tag-along rights to protect minority owners if the majority owner decides to sell to a third party?
- If there is family succession contemplated, will inheriting family members be subject to put or call rights?