

PERSPECTIVES ON VALUE

A SEMIANNUAL NEWSLETTER ADDRESSING
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Ownership Agreements and Business Valuations

Do you have a multiple-owner client? If your answer is “yes” and you believe that in the near future it’s likely this client will need or want to begin transferring ownership and/or real estate to a family member or employee, you have the opportunity to provide some very meaningful counsel to protect your client’s business interest. No matter how well the multiple owners have gotten along in the past or their current belief that things will always be rosy, you must consider whether their shareholder agreement, partnership agreement, or operating agreement adequately provides for an effective and efficient transfer of ownership under a variety of circumstances. If the owners don’t currently have in place a shareholder agreement or other documents spelling out the terms of ownership, transfer, etc., they should be counseled about the necessity of having these agreements.

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As advisors to our clients, we are in a unique position to review their existing or proposed ownership



agreements and make sure these documents meet current and future needs.

Depending on the structure of the current or proposed ownership, there are likely to be significant concerns about items such as the following:

- how best to sell their shares under various situations
- the rights of the parties in the event of a disagreement
- who qualifies to be an owner

One significant issue we can help our clients deal with in the shareholder or operating agreement is how to value an interest in the entity. Performance and issuance of a formal valuation report can be costly and time-intensive. Under most circumstances, we can help clients develop a valuation template for use each year that will generally meet their needs and save them considerable time and money.

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In this circumstance, the shareholder or operating agreement should require that the owners meet on an annual basis to develop and document the share/unit price to be used under the various transfer or redemption scenarios identified in the shareholder agreement. This process forces the owners to evaluate their business performance annually, offers you a great opportunity to be a resource in developing their value conclusion, and assists them in addressing other business issues.

Anderson ZurMuehlen has developed a process to assist clients in building and documenting their annual value conclusion, saving owners the considerable time and expense it takes to have an independent appraisal completed. Working closely with clients, we assist in evaluating their unique business issues as they change over time, allowing owners to give proper consideration to recent changes in their business. One note of caution: Clients must understand that the value conclusion they reach each year will likely not meet the adequate disclosure standards under IRS regulations. 

Exiting Your Family Business: Some Reasons to Stay On as Owner


Most family business owners will eventually have to decide when to step out of the business and how to do it. Two paths are available to owners exiting a business: (1) changing leadership while still maintaining ownership, and (2) exiting from ownership.

There are many factors that might influence you to choose the first path, retaining ownership and turning over management to someone else. Here are a few:

- Children are in place to run the business but currently lack the financial ability to purchase it. While you may certainly choose to finance the sale



of the business to your children, creating a creditor/debtor relationship can easily lead to animosity between family members. A gradual transition in management of the business provides your children with capital to build the business but not a heavy debt burden. Your children can use the profits to both ensure a return on your investment and build capital to finance the purchase of the business.

- Key individuals are in place to run the business but currently lack the financial ability to purchase it. You may choose to finance the sale of the business to key employees/managers. However, lending to an unrelated third party brings financial risks that need to be evaluated. Maintaining an ownership position, particularly a majority position early on in the transition, provides both parties with some security and much needed capital to successfully transfer the business.
- You want to retain a sense of belonging. For a variety of reasons both personal and business-related, you may not be ready to let go of ownership. Family members are important in helping everyone walk this path. There are dangers to holding on too long and placing the family wealth at risk.
- The business is not ready to be sold or transferred at its optimal price. The business may simply not be ready for sale. Family financial constraints, franchise or dealer agreements, poor planning/preparation, or a sluggish economy may well argue for delaying sale of the business. 

Communications with Expert Witnesses

In many cases, communications with expert witnesses take the following course:

- Calling and retaining the expert, making sure a conflict of interest does not exist.
- Sending the expert the documents you consider necessary and those requested by the expert.
- Interim communications as the expert develops his/her opinions.
- Reviewing the expert's report.
- Possibly preparing the expert for deposition.
- Possibly developing the organization of testimony for trial.

While the interactions listed above represent the minimum we usually encounter, this list does not include providing the information that can be the most valuable. These additional communications can be on virtually any topic. In our experience, some of the most valuable communication has included the following:

1. A broader definition of the case beyond what the expert has been retained to opine on. This may allow the expert to focus his/her experience on issues retaining counsel was not aware of. Also, it may allow the expert to interpret facts in a manner different than that of retaining counsel. We've

been told a number of times by different attorneys that our case consultation and comments are just as valuable as our expert opinions. Because the training of expert witnesses differs from that of lawyers, experts may see facts in a different light than counsel. These differences may be important.

2. As experts, we're always interested in the style, demeanor, mannerisms, and particular strengths (and myths) of opposing counsel. While this knowledge doesn't allow us to anticipate the questions we must answer, it does help us be more comfortable in knowing what to expect.

3. Prior to trial testimony, provide the expert with an assessment of how the trial has proceeded up to that point. This information, which is based on your observations, can take any form: information about the judge or jury, the opposing party, prior trial testimony, your feelings about what has taken place, etc.

Several years ago this type of communication allowed us to respond to a cross examination question in a manner that had more impact and importance than any of the expert opinions that were provided. Knowledge truly is power; the better prepared your expert is, the better prepared you are. ■



Merger Announcement

Anderson ZurMuehlen & Co., P.C. and Hamilton Misfeldt & Co., P.C., two well respected, long standing Montana accounting and business consulting firms, will merge their practices effective July 1, 2011. Both firms are excited by this opportunity to join together and provide an even greater depth of expertise in delivering the high quality, personal service their clients expect and deserve. The Anderson ZurMuehlen name will be retained after the merger and the firm will have offices in Helena, Great Falls, Billings, Bozeman, Butte and Missoula. ■

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Perspectives on Value is published by Anderson ZurMuehlen & Co., P.C., Certified Public Accountants and Business Advisors. The technical information it contains is necessarily brief. No final conclusions on these topics should be drawn without further review and consultation.

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties assessed under the Internal Revenue Code.

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Enterprise Risk Management: A Key Element in Your Success

When businesses experience significant bumps in the road, fewer than 50% will still be serving their clients or customers one year later (according to U.S. News & World Report). Far fewer will survive five years, and only 6% of businesses will survive if the loss is related to their corporate data (according to the University of Texas).

Consider what would happen to your business (or your client's business) if the owner passed away, a key employee left, a hacker gained access to confidential data, your main facility was destroyed, you were unable to renew your line of credit, one of your main suppliers went out of business, or any number of other unpleasant surprises presented themselves.

It happens all the time, and very few businesses are prepared. In recent years, businesses in Montana have experienced natural gas explosions, data breaches

affecting thousands of clients, plane crashes resulting in the death of key corporate leaders, tornados, employees stealing hundreds of thousands of dollars, and many more issues.



There are substantial risks in business. Most owners don't see their true exposures and will not survive a major challenge. Our Enterprise Risk Management (ERM) group has created a comprehensive process designed to guide business leaders in assessing critical risks they may never think about on their own. Our purpose is to help document risks and provide the options and resources needed to guide companies to long term viability and success.

Our ERM professionals look forward to sharing resources, insights and ideas for the benefit of our clients and business partners. We hope we can assist you or your key clients with a risk review in the near future. 