

A PARTING OF PARTNERS

The death of a business partner can be devastating, a time that may be emotional and demanding enough without the added difficulty of facing complex business decisions. All too often, without the right planning, there may be financial repercussions that can derail a flourishing company.

BY RUSS ALAN PRINCE & HANNAH SHAW GROVE

"Sadly, all the hard work and ingenuity of a successful business owner can be easily destroyed by an unexpected traumatic event. And more often than not," explains Richard J. Flynn, head of the **Rothstein Kass Family Office Group** in New York, "the scenarios that were once considered 'worst case' are suddenly the most common—say a significant operational failure or a long, drawn-out lawsuit."

The best way to avoid these types of issues is to prepare for such possibilities with a buy/sell agreement, a legal contract that will allow a disabled business owner or the heirs of a deceased business owner to be bought out by the remaining partners. "There are two basic types of buy/sell agreements," according to Frank W. Seneco, an advanced planning specialist and president of **Seneco & Associates** in New Haven, Conn. "The cross-purchase agreement, where the surviving partners individually purchase the equity of the deceased or disabled partner, and the redemption agreement, through which the company purchases the interests of the deceased or disabled partner."

It may sound simple enough, but very few professionals are taking the steps to avoid unnecessary problems. Recent research with more than 1,000 multi-partner businesses reveals that just 40 percent are prepared for the death of

a partner and a mere 15 percent can handle the disability of a partner. When queried about their lack of planning, most business owners blamed their busy schedules, claiming not enough time to consider, address or deal with the loss of a partner. And while some owners have taken legal precautions to protect their greatest assets, many efforts are inadequate, including agreements that haven't been structured properly or are out-of-date.

Typically, buy/sell agreements are funded with disability or life insurance, and the benefit payments are used to make the designated buy-out purchases. "This can be a smart approach," says Flynn, "if everything is kept current and can cover the true cost of the equity owned by the injured or deceased individual." This means when a business increases in value, the agreement should be updated to incorporate the new valuations and the insurance coverage should be increased commensurately. "We usually help our clients find meaningful economies of scale when their coverage requirements go up," states Seneco. "But, cost savings aside, it's important to recognize that despite its legal nature, a buy/sell agreement doesn't always deter a lawsuit during a trying business transition and adequate funding is an excellent defense."



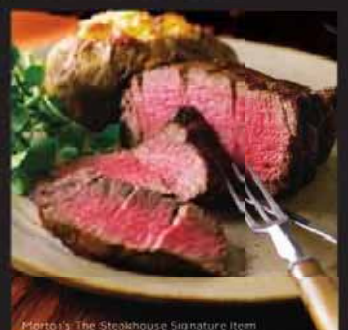
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