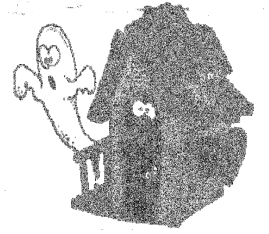




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“Tip of the Month”

Shareholder Buyouts

Whether a company is a corporation or a limited liability company (LLC), there may come a time when one of the stockholders or shareholders decides to leave the company. Usually, the leaving shareholder would like to sell the corporate stock or LLC interest shares back for money. Usually, the remaining shareholder(s) should want to get the shares back.

Rarely is it a good idea for a closely-held company to allow shares to remain floating out in the world with a shareholder who is no longer active with the company.

When arranging to buy back the shares, the first question is usually valuation. Value can often be hard to determine for a small business. Shareholders are sometimes reluctant to hire expensive commercial appraisers. They can often arrive at a value by negotiating among themselves, often with the help of an accountant.

Sometimes a departing shareholder is pleased to simply walk away from the company's debt obligations, if the appropriate releases can be obtained for that shareholder. The remaining shareholder(s) might be willing to assume full responsibility for the company's debt in exchange for getting back shares.

If the company is incorporated, there are generally two ways to buy back the stock. Either the corporation can buy (redeem) the stock back to the corporation's treasury (a redemption), or the other stockholder(s) can buy the stock (a cross-purchase). The preferred tax result will dictate this choice.

If the purchase price for the shares is high, it is often paid out over time to the departing shareholder. This is usually governed by a promissory note and a share purchase agreement. The shares are often held in escrow as security until the purchase price is paid in full.

The share purchase agreement will sometimes include non-compete, non-solicitation and confidentiality terms for the departing shareholder. The remaining shareholder(s) want to prevent the departing shareholder from going into business against the company, from stealing any of the company's employees, and from revealing any of the company's secrets.

If you need any help with a shareholder buyout or other transition agreement, please feel free to give us a call at 668-1971 or contact us through the Internet at *Meslaw @ aol.com*.

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