Are Your Wishes Clear?

Most business owners spend a lifetime building a business without really considering what will happen when they are not there to run it. Some have put together buy-sell agreements on the advice of their corporate attorney, who often just pulls it from a form book without giving much thought to what the business owners really want to have happen. Or, the owners do nothing — just let the chips fall where they may.

When designing a business succession plan, you need to consider carefully, for each owner, what should happen to their share if they die, become disabled, or retire. It might be a different answer for each owner of the business. For example, say you have three owners, Walter, Jesse, and Gus. Walter is married with two children. His wife is the bookkeeper and handles all financial matters for the company. Walter's son, Flynn, is active in the business and would eventually like to have ownership. Flynn has shown promise and has quickly caught on. It is unknown if Walter's young daughter will be interested in joining the business someday. Jesse is young and unmarried. Gus has been in the business many years and is nearing retirement. He has no children or other family involved in the business. Several years ago, their corporate attorney drafted a stock redemption agreement for them.

So, what do the owners likely want? If Walter dies, becomes disabled or retires, he would like his share of the business to go to his wife and active children, who will continue to work for and run the business. Jesse, being single, just wants to make sure his siblings get fair value for his share. Gus wants to make sure his wife and/or kids get fair value if he dies, or that he gets what he considers fair when he retires. Gus is not interested in increasing his ownership share if Walter or Jesse die or become disabled.

What do they have? Their stock redemption agreement says that if any of the owners die, become disabled or retire, the corporation will buy back and retire their shares. In other words, if Gus dies, his family will receive cash for the sale of his interest and Walter and Jesse will become 50/50 owners. However, if Walter dies, his family is taken out of ownership and Jesse and Gus will each own 50 percent of the business. This is clearly not what they want.

When planning your business succession, decide what you want to have happen at each owner's death, disability or retirement. Then look at what will actually happen under your current plan (or lack of plan). If these do not match, it's time to meet with an attorney who specializes in business succession planning. A qualified attorney can help you sort through your options and design an agreement that will be in sync with what you want.