THOMPSON McNICHOL
lawyers

Suite 5, 32 Aerodrome Road
Maroochydore QLD 4558
T (07) 5443 1566
F (07) 5443 7196
E mail@tml.com.au

Business Succession Planning

Every business with two or more owners needs to consider what would happen to the business if one of the owners departed due to premature death, total and permanent disability ("TPD") or a traumatic illness.

It is essential to protect the ongoing viability of the business for the remaining owners and ensure that the departing owner or his or her estate is looked after.

A comprehensive business succession plan (or "business will") will normally address three issues in the event of the death, TPD or traumatic illness of an owner or key person of the business.

Loss of key person

It is important to identify the key people in the business and determine what effect the unexpected loss of these people would have on the business. The immediate financial needs of the business should be funded through key person insurance to reduce debt and compensate the business for loss of income, devaluation of goodwill and replacement costs.

Debts of the Business

It is important to put a strategy in place to deal with the debts which a departing owner has guaranteed or which are secured over the departing owner's private assets. Business owners should plan for how such debts will be refinanced in the event of the loss of one of the business owners and life insurance can be an effective tool to achieve this.

Buy-Sell Arrangements

There are two main components of a buy-sell arrangement, one being the insurance cover and the other being the legal Buy-Sell Agreement. A Buy-Sell Agreement usually takes the form of a put and call option so that, on the happening of a triggering event, the departing owner or his or her estate is given an option to sell and the remaining owners are given an option to buy the departing owner's interest in the business for say $1.00. Triggering events usually involve the death, TPD or traumatic illness of the departing owner.

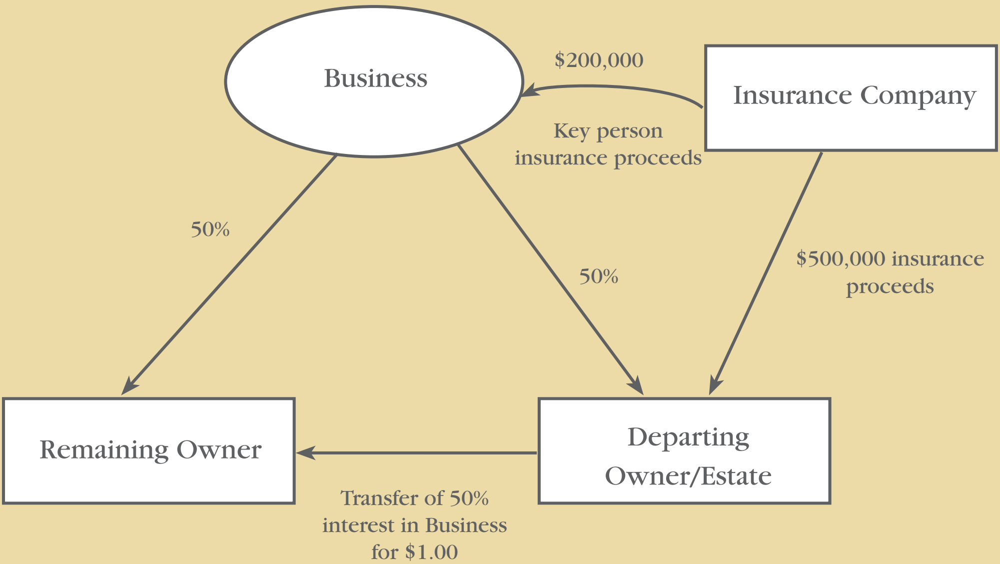
The parties all take out term life, TPD and trauma insurance for an amount sufficient to cover the market value of their interest in the business. Market value is normally determined by an independent person. The insurance proceeds effectively fund the transfer on the happening of a triggering event, so that the remaining owners do not have to fund the purchase and the departing owner or his or her estate is paid out quickly, effectively and fairly.

The Buy-Sell Agreement overrides the departing owner's will, which ensures that the departing owner's estate cannot make any demands on or exercise any control over the business.

The Buy-Sell Agreement funded by insurance reduces the likelihood of being in business with the estate or spouse of a departing owner and provides a clear and precise mechanism for valuing and acquiring the departing owner's interest at a crucial time when the remaining owners will have many other issues to concentrate on.

TYPICAL BUY-SELL ARRANGEMENT

1. Business net value of say $1 million
2. Each Business owner takes out life/TPD/trauma insurance of $500,000
3. Business takes out $200,000 key person insurance to help reduce debt and find a replacement.



For further information please contact our office 07 5443 1566.