How do I SELL MY COMPANY *without* FIRING MYSELF?

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BETWEEN 80 PERCENT AND 90 percent of all construction related firms are family owned. The ability of the owner to properly plan is critically important to the company's successful continuation and the retirement, as well as the family financial future of, the owner. Perhaps subconsciously, owners may wonder "if I don't own or control my company, how will I spend my time, how will my company survive without me?" This type of thinking blocks stepping back and developing a plan for the future. Without a plan, events create a plan that may result in the company losing value, the owner and family paying considerably more income and estate taxes than necessary and harm to longtime valued employees.

The most valuable asset of a privately held company is the owner who has generated years of goodwill, personal relationships and skills not immediately or easily replaceable. Taking advantage of this preserves the value of the company and a seamless ownership transition to the next generation. Rather than selling to a third party or transferring ownership to the family and vanishing, the owner staying involved in the business makes this happen. The owner may act as a "consultant" to the business. The compensation for this service may be used as a method to defer and or lessen tax liability and provide continued group health care benefits. It may be negotiated as part of a private sale or incorporated into a comprehensive overall plan for transfer to family members.

Most owners are the public face of the company. Selecting the future public face of the company from family members, existing employees or selection of new employees must be consciously planned and enables the personal relationships and goodwill created by the owner staying with the company. This involves taking an inventory of the skills of the family members and existing employees and if a successor does not emerge, finding one. It does not just happen. The alternative may be a forced sale for liquidation value.

If a family member is the heir apparent, consideration must be given to whether the transfer will be structured as a sale or gift or a combination. Factors in making this decision include equity among other heirs, available assets in addition to the company, the owner's need for a future income stream and gift, estate and income tax implications.

A sale or partial sale for simultaneous payment results in immediate recognition of gain and resulting income tax liability.

The family member must acquire the funds necessary for the purchase elsewhere. Proceeds from the sale are taxable in the owner's estate and for estates that exceed $2,000,000.00, the excess being subject to federal estate tax at a 45% rate.

This will place a significant burden on the owner's estate and on the company where there are insufficient liquid assets to pay the tax. An estate may elect to pay part or all of the federal estate tax in up to 10 equal yearly installments if the estate includes the value of an interest in a closely held business and the value of that interest exceeds 35% of the value of the estate. This may defer but not lessen the potential 45% federal estate tax liability.

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Lifetime transfers allow the owner to determine, among other things, his or her future income needs, as well as the needs of his or her spouse, and whether or not the owner wants to retain some control over the business. The transaction may be structured to remove the value of the company from the owner's taxable estate or reduce the taxable value and provide a future stream of income for the owner. Payment for the company may be in the form of a gift of a future interest, a retained annuity or loan payments received by the owner from a trust. These options may be used individually or in combination.

In all situations, the continued participation of the owner as a valued consultant avoids an immediate stressful life style change, protects the value of the business, provides smooth transition to family members and creates additional income and estate tax savings opportunities. Prior to applying any of these general considerations, the owner should make full disclosure to professional advisors and review the owner's goals and particular situations with those advisors.

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