**Control Agreements with Buy-Sell Provisions**

You and a friend form a company in which you are each owners. You invest personal money and work long hours. After a period of time, you begin to make a healthy profit. Then, your friend and co-owner decides he wants to sell his ownership stake to a stranger. Or worse yet, your friend dies suddenly and his ownership interests pass to a difficult family member. What recourse do you have? Absent a control agreement which includes buy-sell provisions (a Shareholder Control Agreement in the case of a corporation; a Member Control Agreement in the case of a limited liability company (LLC)), you may not have as much recourse as you would hope.

While Minnesota and other states have basic statutes that outline the rights and responsibilities of business owners, they are fairly generic and don’t cover the broad range of issues that may arise between business owners. To augment the statutes, business owners typically are free to enter into contractual arrangements with each other via a control agreement. Such control agreements may be complex or simple, depending on the needs of the business owners and their relationships. Still, they can be extremely helpful in minimizing owner disputes, providing protection to minority (in terms of ownership percentage) owners, and creating a mechanism for the company or owner(s) to purchase the ownership interests of a departing owner.

Generally, a control agreement, among other things, contains the following basic provisions:

1. Issuance of ownership interests (addresses ability to dilute an ownership interest)
2. Buy-Sell provisions (what happens upon proposed sale, divorce decree, death, disability or other life event affecting ownership)
3. Purchase Price
4. Closing (when Purchase Price is paid and how)
5. Voting and Governance (Which owners hold which offices and how much strategic control can be exercised)
6. Remedies (for breach)
7. Miscellaneous provisions to address events of deadlock (typically where ownership is 50%/50%), non-competition, confidentiality, insurance and other issues specific to the company.

There is a natural temptation for business owners to postpone the creation of a control agreement until after the company is up and running and making money. While this certainly is not uncommon, the risk is that the honeymoon between business owners may be over by this point, making it all the more difficult to persuade all owners to enter into a control agreement.

Control agreements also become an issue in the event your company seeks to bring on additional owners. If the new owners do not sign the control agreement (usually as a condition of ownership), they will not be bound by its provisions.