BUSINESS CONTINUATION PLANNING GUIDE

Wealthbuilders

Exit your business in style!

BUSINESS Continuation PLANNING

Wealthbuilders Ltd – Business Risk and Continuation Specialists

BUSINESS CONTINUATION (Buy/Sell) AGREEMENT Planning Guide

This guide has been assembled to assist the owners of a business with several shareholders/directors to plan the future of the business should an unexpected tragic event occur to any one or more of the shareholder/directors.

The information gathered here can then be used by a specially qualified adviser to create a legally binding business continuation (or shareholder buy/sell agreement) to ensure that if a death, serious disability or critical illness should occur to a shareholder/director or other key person in the business, that the future value and integrity of the business is preserved, and that the family of the affected person is looked after.

While the shareholders of such a business may have a very good personal relationship and may have confidence in each other for the families to be looked after in the event of something tragic happening, it is not generally understood that in the absence of one of these shareholders, you are no longer dealing with each other, but with professional advisers, lawyers, banks and creditors who will not be so sympathetic and will all be looking for money wherever they can find it easily.

I have found that many existing partnership agreements and/or buy/sell agreements are focused mainly on the transfer of shares but are seriously deficient in many areas, and do not adequately provide for the serious consequences of overlooking such things as: –

1. business debts and loans,
2. directors' personal guarantees
3. shareholders' current accounts
4. key person responsibilities

Some of these issues, particularly personal guarantees and shareholders' current accounts may be more important to the survival of the business and the financial well-being of an affected family than the shareholding itself. There is possibly more give-and-take in the area of share transfers than with creditors and predators who will be looking for money.

The planning guide will help the shareholder/directors to not only plan what is to happen to the shareholdings, company debts, personal guarantees and shareholders current accounts but how each of these issues is to be funded. The most efficient way of funding is normally an appropriate insurance contract over the lives of the shareholders/directors, and this option is usually much cheaper than borrowing to fund each of these activities. In fact, borrowing to cover existing debt is probably not possible. Few businesses have sufficient reserve liquidity to be able to provide a cash solution.

Because the guide covers so much more than the share buy/sell issues, I prefer to use the term of BUSINESS CONTINUATION AGREEMENT.

I strongly recommend that if you are considering using this guide, that you contact me to help you through the decision making process so that you have the full use of my 26 years' experience in this type of planning exercise.

Please feel free to contact me for a free Business Continuation consultation. CLICK HERE **to book**

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BUSINESS RISK and CONTINUATION SPECIALIST

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BUSINESS CONTINUATION PLANNING for	(Company name)

Share ownership

Shareholder 1 Name	
Number of shares held personally	
If shareholder is a natural person, who inherits the shares under the terms of the Will? [Names and address]:	
Name of shareholder's Trust:	
Number of shares held in Trust:	
TRUSTEES -Names and address: e.g. Fred Barnes Auckland	

Shareholder 2 Name	
Number of shares held personally	
If shareholder is a natural person, who inherits the shares under the terms of the Will? [Names and address]:	
Name of shareholder's Trust:	
Number of shares held in Trust:	
TRUSTEES -Names and address: e.g. Fred Barnes Auckland	

Shareholder 3 Name	
Number of shares held personally	
If shareholder is a natural person, who inherits the shares under the terms of the Will? [Names and address]:	
Name of shareholder's Trust:	
Number of shares held in Trust:	
TRUSTEES -Names and address: e.g. Fred Barnes Auckland	

Shareholder 4 Name	
Number of shares held personally	
If shareholder is a natural person, who inherits the shares under the terms of the Will? [Names and address]:	
Name of shareholder's Trust:	
Number of shares held in Trust:	
TRUSTEES -Names and address: e.g. Fred Barnes Auckland	

Share transfer

In the absence of a robust Business Continuation Agreement, it is unlikely that all parties will be happy with the outcome. It is far better to determine an equitable outcome while the playing field is level.



If your business partner dies, do you want to be in business with your deceased partner's widow's new boyfriend's accountant and lawyer?



If you die, will your family want to remain in business with your surviving shareholder(s) or would they rather have the cash?

For more information, please see the complimentary E-book "How to Stop Your Business Going Bust."

(Available on request info@wealthbuilders.kiwi) or CLICK

Shareholder 1 Estimated value of shares held personally, in Trust and by family (e.g. spouse)	$
In the event of a death of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
In the event of a Total and Permanent Disability of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
In the event of a critical illness of this shareholder, – what is the preferred option for the ownership of the shares?	1. Nothing 2. Stay with the family/family Trust. 3. Full purchase by surviving shareholder(s). 4. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 5. Purchase by the company 6. Other…….

Shareholder 2 Estimated value of shares held personally, in Trust and by family (e.g. spouse)	$
In the event of a death of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
In the event of a Total and Permanent Disability of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
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Shareholder 3 Estimated value of shares held personally, in Trust and by family (e.g. spouse)	$
In the event of a death of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
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Shareholder 4 Estimated value of shares held personally, in Trust and by family (e.g. spouse)	$
In the event of a death of this shareholder, – what is the preferred option for the ownership of the shares?	1. Stay with the family/family Trust. 2. Full purchase by surviving shareholder(s). 3. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 4. Purchase by the company 5. Other…….
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In the event of a critical illness of this shareholder, – what is the preferred option for the ownership of the shares?	1. Nothing 2. Stay with the family/family Trust. 3. Full purchase by surviving shareholder(s). 4. Partial purchase by surviving shareholder(s) the remainder to remain in family/Trust ownership 5. Purchase by the company 6. Other…….

Business debts and personal guarantees

Personal guarantees given by company directors to secure company debts are normally Joint and Several- meaning that all parties are responsible for the entire debt. Personal Guarantees survive death and are a prior charge on the deceased's estate and need to be extinguished before the estate can be settled. If these Personal Guarantees are not dealt with, the family of a deceased or disabled shareholder will be unable to access the estate until this issue is resolved. This could take years and could involve huge legal costs.

The financial stability of a company may be diminished by the exit of a key person, and a lender may insist on full or partial repayment of a debt before releasing the guarantee.

Signatories to Personal Guarantees

Shareholder 1 Total debt	$
Shareholder 2 Total debt	$
Shareholder 3 Total debt	$
Shareholder 4 Total debt	$

Shareholder credit current accounts and term loans to the company

If there is a credit balance in the shareholder current account or there are outstanding loans to the company, this should be taken into account as the surviving family members and/or trustees will demand re-payment of the funds held in the current or loan account. A company is unlikely to have access to sufficient funds to enable this to happen.

Shareholder 1 Total of credit current account and outstanding loans to the company	$
Shareholder 2 Total of credit current account and outstanding loans to the company	$
Shareholder 3 Total of credit current account and outstanding loans to the company	$
Shareholder 4 Total of credit current account and outstanding loans to the company	$

Shareholder debit current accounts and outstanding term loans OWED to the company by the shareholder

If there is a debit balance, the surviving shareholders would want that current account balance to be repaid to the company. This is particularly important if there is any doubt about the stability of the company after the loss of a key person. Creditors, possible receivers or liquidators would certainly demand repayment. This often leads to company liquidation and personal bankruptcies.

Shareholder 1 Total of debit current account and outstanding loans OWING to the company	$
Shareholder 2 Total of debit current account and outstanding loans OWING to the company	$
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Key people

People and revenue are the lifeblood of every business and the two are inextricably linked; i.e. revenue depends on people and people depend on revenue.

If a business is to be able to continue trading following the sudden unexpected loss of personnel to a serious life risk (i.e. disablement, trauma or death), it must remain solvent and able to continue meeting its financial obligations as well as maintain shareholder value.

Will the loss of a key person affect the value or profitability of a business?
In any Business Continuation Plan the effect on the cost structure and the profitability of the company due to the loss or temporary or permanent disability needs to be calculated and steps put in place to minimise the negative financial effects.

Shareholder 1 Value as a key person to the company. (i.e.) How much of the gross profit is attributable to the efforts of the key person?	$
Shareholder 2 Value as a key person to the company. (i.e.) How much of the gross profit is attributable to the efforts of the key person?	$
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Independent Trustee

Trustee to administer the terms of the agreement and to distribute any insurance proceeds.
(Strongly recommended.) Having an independent trustee ensures that insurance policy proceeds end up in the right hands, and protects against creditors and predators having access to the funds. It also ensures that the terms of the business continuation agreement are adhered to and that the wishes of the shareholders/directors are carried out.

Name of independent Trustee.	DEFAULT Perpetual Guardian are able to provide this service. Contact me for details

BACK UP YOUR BUSINESS

Why should you create a Business Procedures Manual?

Suppose you were unable to get in to work tomorrow, and you were also unable to communicate with your employees and customers in any way?

A Business Procedures Manual will provide you with a practical, step-by-step guide for your business managers on how to "back up" or absence-proof your company by setting down all the systems, processes and policies that make it work so well. If you weren't there, an acting manager, employee, temp or friend could step in, access the information that you have provided, and will have enough information to run the business smoothly for you.

Note all key areas such as equipment and office systems

- administration
- stock purchasing policies
- human resources and OSH policies
- financial management
- insurance

Contributed by Deb Wilkinson - **Getting You Organised -Where's the Password?**
www.gettingyouorganised.co.nz/

This e-book is prepared for your information and guidance by Barry Vincent FLBA CIA.

Barry Vincent is a Registered Financial Advisor -FSP 294626.



Disclosure Document is available on request

Business Continuation Planning

A division of **WEALTHBUILDERS LTD**

Please feel free to pass this E-book on to friends, business acquaintances or other business people whom you feel might benefit from the information. *Barry Vincent*

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BUSINESS Continuation PLANNING

FREE E-book – "How to Stop Your Business Going Bust" CLICK HERE

Read some content from "How to Stop Your Business Going Bust"

You own a profitable and growing business which provides a lot of what you desire: Income, wealth, an identity, challenges, stimulation, satisfaction and pride.

However, your business may be failing you in an unexpected way. Because in the end, what you really need from a business is the ability to leave it – under the most favourable conditions.

You also need to be able to take some money with you to compensate you and your family for the hard work and sacrifices made over the years.

What factors could adversely affect your business value or personal financial security?

1. *Business ownership*
2. *Company debt*
3. *Property lease*
4. *Shareholder current accounts*
5. *Personal guarantees*
6. *Key people*

WHAT HAPPENS WHEN A BUSINESS OWNER DIES, IS DISABLED OR SUFFERS A SERIOUS HEALTH TRAUMA?

We need to consider the ongoing ownership of the business in the event of the death, total permanent disability or serious condition of any owner For More, please CLICK