CUMMINGS & LOCKWOOD LLC

WHAT STEPS WILL A FAMILY BUSINESS ORDINARILY TAKE IN ORDER TO INSULATE ITSELF FROM THE PROSPECT OF NON-FAMILY OWNERS?

Most owners of family companies fear the possibility of a non-family member becoming an owner of an interest in the family company. Even if that owner is merely an assignee with no voting power, she will have the right to inspect company records. To protect against this prospect, the agreement that governs a family company should give the existing owners a right of first refusal which is triggered in the event of a proposed transfer to an individual who is not a member of the family. In the event of a proposed transfer, this provision would permit the existing owners to purchase the interest at issue under similar terms or for its fair market value. The agreement would ordinarily provide that the right of first refusal, if exercised, would result in a sale to the existing owners under favorable terms.. For example, many of these provisions provide that the sale will occur in conjunction with a balloon promissory note using a 15 year term with the lowest permissible interest rate. This kind of a provision serves the dual purpose of discouraging sales of interests in the family company and, should such a potential sale arise, making the purchase under the right of first refusal a palatable financial option for the existing owners.