

## How to Transfer Ownership of Closely-held Corp?

I have a client who wants to buy out his "partner." They did not get official stock certs and the 2 are the only shareholders.

What documents do you need? I am thinking an agreement between them? If an LLC I would do a transfer of membership interest certificate. Thinking out loud here.

What do you need to make that happen?

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Not a Utah attorney.

I don't really for all corporations do certificates any more, at least here in Florida. Our statute specifically states, "Shares may but need not be represented by certificates," but then goes on to put really specific requirements of what needs to be put on the certificates, if used. I can't even tell you how many times I've seen small family or 2-person corporations who do certificated shares but don't do the share issuance right (thanks, mailaway services!) So, I can put in the bylaws that the shares of the corporation aren't certificated, and the corporate ledger controls, and define only one class, which is what most of my clients prefer (though I'm not dealing with any tech startups or businesses with rapid expansion plans.) So what do the bylaws say (let me guess - there are no written bylaws, either)?

Yes, I'd do a written agreement. And when you do the exchange of money/closing, I'd have a special meeting of the shareholders confirming or approving, if needed, the transfer of shares (waiving notice if needed), have both sign the minutes, and the secretary update the ledger.

Again, not a Utah attorney, so check the statutes to make sure nothing in particular is required.

Cynthia V. Hall, Florida

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A simple Sell or Purchase document outlining the terms of the transaction. Include in the agreement a specific power of attorney for the purchaser to be able to sign any and all documents presented to him to effectuate the sale.

Robert "Robby" W. Hughes, Jr., Georgia

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Generally speaking, when it comes to corporations one gains ownership by buying shares of the corporation, whether the corporation's shares have been certificated or not (state law specific. If state requires certificates, I suppose there is a provision to issue such certificates after the fact). The partners need to enter into a buy/sell agreement.

Roman R. Fichman

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Lots of moving parts here. Will company continue operations? Can you review the corporate records, charter, bylaws, meeting minutes? Will the stockholders be cooperative? Did he have a will? Where does his stock pass? Was he due any dividends, salary?

Rob Robertson, Texas

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Echoing what folks said above:

1. Agreement for the sale. It can be signed & closed at the same time, but see points 2 and 3 if you have any issues to resolve prior to closing.
2. Complete diligence of the corporate records especially on any sale or potential springing sale (i.e., a 3rd partner is present or becomes a partner, who is unknown to the buyer-partner, e.g., silent investor, lender to seller, current or past spouse of seller). The two should be pretty familiar with operational liabilities so the sale agreement can be pretty "light" on this - consider an indemnity to cover past problems equal to shareholding percentage or to reduce price equal to assumed liabilities.
3. Check material contracts for "change of control" provisions and if any 3rd party consent is needed like a landlord, insurer, or a company lender.
4. Have a meeting and/or written consent to the sale, resignation of directors and officers, possible appointment of new D & O, ratification of past acts if appropriate.
5. File change of owners with Utah Division of Corporations and Commercial Code (and any other jurisdictions it is doing business in).
6. Redo and adopt corporate documents to accommodate the sole partner - don't rely on old corporate docs for this as it creates confusion.

Above all, check everything first with a tax professional as the sale will trigger capital gains & other federal and state taxes in year of sale. The structure should be consistent with tax advice. This is the biggest concern I see.

Murtaza Sutarwalla, Texas