

## CHECKLIST FOR EXECUTIVE TERMINATIONS

### PRIOR TO TERMINATION:

- Gather and review all documents governing the executive's employment and benefits
  - Employment agreement (with any amendments)
  - Restrictive covenant agreements
  - Restricted stock awards, option agreements, or other agreements regarding securities or equity owned by executive
  - Applicable benefits policies/plans
- Identify any procedural prerequisites for termination (or for termination for "cause", if appropriate), e.g., conducting an investigation, providing notice and an opportunity to cure, securing Board of Directors' approval, etc.)
- Determine the amount and timing of any compensation to be paid upon termination
  - Severance?
  - Bonus/commissions?
  - Continued or replacement benefits?
  - Can compensation be conditioned on the execution of a release? If so, work with counsel to ensure that an appropriate release is prepared.
- Determine whether the termination will trigger any consequences for the equity ownership of the executive
  - Will options be forfeited or, alternatively, will they vest at an accelerated rate?
  - Does the company have an obligation or a right to repurchase the executive's shares? If so, when must the right be exercised?
  - If the company does not have the right to repurchase any equity held, what other options are available, if any, to part ways?
  - Is a valuation necessary and, if so, using what criteria?
- Ensure that the business is ready for the executive's termination
  - Do key customers/relationships need to be transitioned?
  - Is there a successor or a succession plan in place?
  - Does the executive have unique knowledge that needs to be accessed?
  - Does the company need to engage a public relations firm to assist with the messaging regarding the termination?
  - Is a transition arrangement needed?
- Prepare for potential competition by the executive
  - Are restrictive covenants in place (in an employment agreement, separate restrictive covenant agreement, benefits plans, restricted stock agreements, etc.)?
  - If so, are the covenants enforceable? To what extent?
  - If not or if uncertain, consider incorporating new covenants into a separation agreement. Involve counsel for this analysis.
  - Are trade secrets/confidential information/intellectual property adequately protected?
  - Will other valued employees likely leave with the terminated executive?

## **AT THE TIME OF TERMINATION:**

- Convey the decision appropriately under the circumstances (and with a prepared script, if you anticipate a difficult event), recognizing that many claims arise from an employee's anger at the manner of termination
- Present appropriate paperwork (including a separation agreement, if any). Involve counsel as needed particularly if you are trying to "cut a deal" at the same time that you are communicating the termination decision
- Ensure that company property/technology is properly secured
  - Collect Blackberry/phone/PDA, keys, credit cards, computers, car, sales materials, etc.
  - Cut-off access to computer system
  - Delete or gather all company information from employee's home or personal computer
  - Transfer email account and voicemail
- Handle associated marketing and operational issues
  - Remove the executive from the company website
  - Communicate the departure internally and externally (again, using a public relations professional if appropriate)
  - Arrange for employee's resignation or termination as a member of the Board, officer of the company and/or its affiliates, etc.

## **AFTER TERMINATION:**

- Ensure that post-termination compensation is paid strictly according to agreement. Note that some states have strict payment upon termination requirements
- Monitor for competition, and act decisively if former executive's behavior is unlawful