

A BUSINESS SUCCESSION PLAN CAN GO A LONG WAY

There comes a point in time when almost every small business owner contemplates the future of his or her business. Because “the business” typically is a substantial asset, an owner must address a number of estate planning issues that will affect the future stability of the company. A business succession plan is a comprehensive look at the estate planning picture that can include everything from shareholder buy-sell agreements to management plans and any other documentation that will help ensure the smooth operation of the business. While traditional estate plans are designed with tax minimization in mind, business succession planning, in addition to such considerations, is aimed at maintaining the future health of the business.

Protection for Family Members and Executors

Proprietorships and partnerships must cease operation as such upon the death of the owner or partner. Although a partnership agreement will generally provide for the continuation of the partnership by the surviving owners, it is also important that some provisions be made for acquisition of the deceased partner’s interest. A sole proprietorship cannot be continued in the same manner as can a partnership, but the proprietorship assets can pass by will to the decedent’s intended successor.

If the proprietorship assets are not specifically bequeathed to, say, a child who has been identified as the successor to the decedent, they will pass under the general disposition provisions prepared by a qualified attorney of the will. During the probate process, the executor would be responsible for operating the business, which could result in business losses and lost value. To address this and other potential problems, a business succession plan is critical. Such a plan, which might consist of a buy-sell agreement or carefully drafted will provisions, can help provide answers to the following important questions:

- Who has the authority to continue its operation?
- Will it be sold, liquidated or continued?
- Who are the potential buyers and do they have the cash to affect the purchase in a timely fashion?

To promote continued operation of a sole proprietorship, the owner might leave instructions as part of his or her estate plan setting forth his or her intentions with respect to management of the business following death. These directions might provide some guidance to a successor proprietor such as a spouse or child who might need assistance during the transition period. Since the successor would, however, own all of the business assets and have full control of business operations, the successor could choose not to follow such guidance.

In some instances, a sole proprietor may be able to simplify the transfer of the business at death by converting it to a corporation under state law while alive. Since a corporation

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has continuity of life, many of the issues confronting a sole proprietor at death can be avoided. Nevertheless, it would still be important for there to be competent management in place to succeed the decedent, and to have a buy-sell plan in place to govern the transfer of his or her shares.

Insurance Plays a Key Role

Typically, an owner's death or disability can create an array of financial problems affecting both the business and the owner's family. For instance, issues such as estate taxes, loss of income, or a buyer having adequate cash to purchase the deceased or disabled owner's shares are problems that cannot be entirely ensured by a succession plan. For this reason, life insurance and disability income insurance go hand-in-hand with business succession planning. Proper insurance coverage can: 1) help an owner's family meet estate tax obligations, which in many instances may help keep a business in the family (if so desired); 2) help replace an owner's loss of income due to death or disability; and 3) help a partner(s) or existing employees have the necessary cash to buy out the deceased or disabled owner's share of the business.

A team consisting of your lawyer, accountant, and financial representative can help you develop your business succession strategy, including all the necessary documents and information. There are established methods for transition that can help leave both your business and successor management free from unnecessary worry or jeopardy. In addition, through life and disability insurance coverage, the transition can be properly funded to help avoid substantial losses that might otherwise occur.

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