

Business Succession Considerations for Small Business Owners

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 an owner or partner. Although a partnership agreement generally will provide for the continuation of the partnership by the surviving owners, it is also important that some provision be made for the acquisition of the deceased partner's interest. A sole proprietorship cannot be continued in the same manner as can a partnership. If proprietor 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 dispositive provisions 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 about the future of the business:

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

To promote the continued operation of a sole proprietorship, the owner might leave written instructions setting forth his or her intentions with respect to management of the business following death. Such writing might provide some guidance to a successor proprietor (e.g., 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 corporate form while alive. Since a corporation 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 agreement in place to govern the transfer of his or her shares.

How to Begin

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