

## **SUCCESSION PLANNING FOR BUSINESS OWNERS – WHY ESTATE PLANNING IS A CRUCIAL ELEMENT TO THE PLAN**

By Rochelle Haller

While it is not pleasant for business owners to think about what would happen to their business if they unexpectedly become incapacitated or pass away, it is something that every business owner should consider in consultation with their team of trusted advisors to ensure a plan is in place to protect their business and family.

Such a team should include an estate planning attorney, business attorney and financial advisor. This team is important to have on board for both the business succession plan and the business owner's estate plan, which are interrelated, yet serve different purposes.

Business succession plans are designed to transfer ownership and management of the business. The estate plan creates the structure and mechanism for transferring both business and non-business assets at the owner's death. Care must be taken to ensure that the business succession plan and the owner's estate plan dovetail, otherwise discrepancies can result in conflict or an unexpected disconnect between the ownership and the management of the business.

Before consulting with an estate planning attorney, a business owner needs to create a contingency plan. In other words, prior to creating or updating an estate plan, a business owner needs to make fundamental decisions about what will happen to the business upon his or her death or disability. Does the business owner want the business to continue? If so, who will run the business? Are the owner's family/beneficiaries capable of taking over the business? Will they want to? Should the business be sold? If so, what is the best way to transfer ownership?

The business owner also needs to consider the implications of the transfer on his or her family. Specifically, if the business is to be retained by certain family members, how will the transfer affect the financial needs of the surviving spouse? If the owner wants to transfer the business to one or more children involved in the business, does his or her estate plan provide for a fair distribution to other family members? How should the value of an illiquid business interest be compared with the value of other estate assets (e.g., cash or marketable securities)? What impact will these decisions have on family relationships?

Regardless of how the business is to be transferred upon the business owner's death, the owner also needs to consider the estate tax implications for his or her estate. The current federal estate tax exemption amount is \$5.45 million with a tax rate of 40 percent, and Washington state has a \$2.079 million estate tax exemption with a top tax rate of 20 percent. The business owner needs to consider if he or she has enough liquid assets to pay estate taxes without having to sell the business. Even if the owner wants the business to be sold upon death, the estate shouldn't be subject to a fire sale to pay estate taxes due nine months after death. If the business is to be kept in the family, does it make sense to make lifetime transfers of business interests to family members and take advantage of possible valuation discounts?

These are all big questions that must be answered. Before meeting with an estate planning attorney and other team members, a business owner should work with family members and

business partners to try to answer these critical questions, including how the business should be operated immediately after death or disability. Succession planning for business owners can be extremely complex. However, if the business owner and his or her advisors are willing to take the time to identify and understand the owner's estate planning goals and concerns, the owner will be in a much better position to ensure that his or her plan takes advantage of the appropriate tools and techniques to meet the owner's ultimate needs and objectives.

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