

## Estate Planning for your Business

By Sarah Bowman

Estate planning is something everyone should occasionally revisit - especially during major life changes such as marriage, divorce, the birth of a child, or inheritance of assets. However, estate planning isn't something that just affects someone's family. It can also play a large part in business succession planning.

Business owners should not only take stock of their personal plans, but also the terms of the governing documents for their businesses, especially when multiple people own the business. Ensuring that planning documents for a business are in order can save a headache for a deceased owner's family and for the surviving business owners.

Business owners should think about what they want to happen to their business if they become disabled or die. Business owners should consider who they want to take over the business if they can't operate it anymore, and in what circumstances they may wish to sell the business. When a business has multiple owners, it is important that all the owners work together to agree upon these terms as they should be prepared for their own death and the death of one of their partners. The owners will likely want the same terms to apply to each of them.

A business should have its ownership and governing terms detailed in an operating agreement. The operating agreement should reflect who owns the business, the percentage of ownership, how the business interests can be transferred and to whom, how the business interests are to be valued, and what happens to an owner's interest upon death or disability. In the operating agreement, business owners may want to restrict who can receive shares of the company. For example, some owners may wish to restrict transfer of shares to only lineal descendants, while others may wish to allow spouses or other non-family members to become potential owners.

Business owners may also wish to consider whether they want to differentiate between ownership and operating rights in their succession planning. For example, an operating agreement for a business can specify that recipients of a business interest - by way of gift or inheritance - may receive economic benefits from the company but may not participate in any operating decisions. Separating ownership and operating rights can allow a business owner's family to maintain ownership and avoid having to immediately sell a business interest when an owner dies, while allowing surviving owners to know that they can continue to operate the business without input from the other owners.

Business owners should carefully consider how they want their business to be valued in the event of disability or death, or if they choose to give away an interest in the business before they pass away. Owners should consider that the valuation will be in place if they are forced to purchase a disabled or deceased partner's interest, and if their interest is sold to benefit their own family.

Coordination among multiple owners is critical to the success of ownership transition without disagreement among the owners or their families. Disagreement about valuation or who can inherit a business interest after an owner's death can lead to expensive and time-consuming litigation. Foregoing an operating agreement or failing to revisit its terms from time to time can result in unintended consequences upon an untimely disability or death. Having a personal will or trust is not enough to ensure that a business interest will transfer in the manner desired, or to ensure that a deceased business owner's family will get the full value out of a business interest. An operating agreement, a buy-sell agreement, and other potential business operation documents should be thoughtfully prepared and coordinated with the personal estate plan of each business owner.

An estate planning attorney can help business owners coordinate their personal estate plans with the succession plans for their business. And if needed, an estate planning attorney can help coordinate business operating agreement updates. Whether a business is in its first years of operation or an owner is near retirement, it is worth taking the time to make sure the plan is right.

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