

## Are You Prepared? Estate Planning for Business

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**A** business owner who is involved in managing a business routinely makes day-to-day decisions that allow for the continued success of the enterprise. Having that control can be intoxicating to an entrepreneur. You are in charge. You see the direct results of your planning and decisions every day. Of course, the business is where it is today because you, and only you, have the required skills, connections and intuition to maintain the business. Your efforts are financially rewarded, providing support for your family.

What if you were not there to run the business? Sure, you have no intention of retiring today. But what will happen if you do retire? What will happen if you become disabled and can no longer manage the business? What if you die?

The failure to address these questions and put a succession plan in place now can have disastrous results, both financially and strategically. These issues are among

the most complicated that a business owner will face. And, it is not only the business succession planning that is difficult. Implementing the plan can also be problematic. Does the business already have a candidate who can be trained to succeed you? If so, grooming your successor and knowing when to turn over the reins can create tension between you.

For the solely owned business, where only one of the owner's children is involved in the business, post-death distribution of assets can create animosity between the involved child and the siblings. Fairly dividing an estate can seem impossible when the major asset is a business which is expected to continue following the demise of the owner. Oftentimes, the uninvolved children feel as though they have been treated unfairly because their brother or sister will inherit the business, but giving an equal interest in the business to all the children is not a realistic alternative. Moreover, the perks of being



involved in the management of the family owned business — the salary, health benefits, car, expense account and retirement benefits — can be seen as favoritism by the others even though the managing child earns these benefits.

Where there are two or more participants in a business, the failure to design an appropriate buy/sell agreement can have devastating consequences. Today, the income of each owner is associated with his or her relative contribution to the successful operation of the business. What if one of the partners or business associates can no longer perform, whether by disability or death? What obligation is owed to the surviving spouse and family? Without a suitable plan, the remaining participants in the business resent sharing the profits resulting from their hard work with the non-contributing spouse and family of the disabled or deceased member. And what if the spouse now wants to participate — or must?

Estate planning for businesses is not a topic that business owners enjoy addressing. To do so, you must face the possibility that someone other than yourself will take charge before you are ready to relinquish control. Yet, creating a plan to ensure the continued viability of your business following a catastrophic event is essential. It may make the difference between whether your life's work will stand as a testament to your foresight, determination and business acumen or shatter because you were unable to face these tough choices. What do you foresee for your business? ♦

### What It All Means from the Legal Information Institute:

- An **estate** is the total property, real and personal, owned by an individual prior to distribution through a trust or will. Real property is real estate; personal property includes everything else, for example cars, household items, and bank accounts. Estate planning distributes the real and personal property to an individual's heirs.
- **Estate planning** is the process by which an individual or family arranges the transfer of assets in anticipation of death. An estate plan aims to preserve the maximum amount of wealth possible for the intended beneficiaries and flexibility for the individual prior to death. A major concern for drafters of estate plans is federal and state tax law.
- **Wills and trusts** are common ways in which individuals dispose of their wealth. Trusts, unlike wills, have the benefit of avoiding probate, a lengthy and costly legal process that oversees the transfer of assets. Sometimes, though, it will be useful to make *inter vivos* gifts (gifts made while the donor is alive) in order to minimize taxes. The federal Gift Tax exempts certain levels of lifetime gifts.

Go to [www.law.cornell.edu](http://www.law.cornell.edu) for more information.



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