



## Succession Planning: **A Business Necessity**

**O**ne of the most critical components of business survival that is too often overlooked is planning for the internal succession of your business. Most business owners, from sole-proprietorships to large corporations, are more concerned with the daily operations, growth and success of the business rather than who will take over when they are gone. More often than not, family-owned business owners put off their succession planning because they don't want to think about their retirement, disability or death. However, business succession planning should be a priority in every family owned business.

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There are key questions which need to be answered before the business owner can "leave" the business. These issues include: will he or she have enough money at retirement; who is going to own and manage the business; how will ownership and management be transferred to new owners; and should the business be carried on or sold to a third party? While some business owners may have ideas for a succession plan, most don't realize that their ideas won't benefit the company unless they are written down. A proper business succession plan seeks to alleviate or lessen these issues by setting up a smooth transition between the business owner and the future owners of the business.

### **The Need for a Buy-Sell Agreement**

The legal document that is commonly prepared to memorialize a Business Succession Plan is the Buy-Sell Agreement. Simply put, the Buy-Sell Agreement provides for the continuation of a business upon a "triggering event." A triggering event could include death, retirement, disability, involuntary or voluntary termination from employment, or a force-out situation of a shareholder or partner. The Buy-Sell Agreement, much like a Last Will and Testament, is the controlling document that details the succession of the company in accordance with the owner's wishes. A properly drafted Buy-Sell

Agreement should cover in detail the who, what, when, why, and how of the succession: who the successor or successors of the company will be; what aspects or part of the company will be transferred; when the transfer or succession will occur; why the succession plan is necessary; and how the succession will occur.

Although Buy-Sell Agreements should cover all of the above issues, no two Buy-Sell Agreements are the same. Again, similar to a Last Will and Testament, each Buy-Sell Agreement needs to be individually prepared for each company in order to properly address that company's unique circumstances. However, unlike a Will, the Buy-Sell Agreement could be triggered while the business owner is still actively employed or working in the company. For example, if the company's growth and success are largely dependent on the owner's or principal's relationships with the company's customers or clients, the Buy-Sell Agreement should provide for a transition plan whereby a time period (i.e. three to five years) is set aside prior to the owner's retirement or withdrawal from employment in order for the owner to have sufficient time to transition the clients to the successor of the company. Without a transition plan in place, businesses that are dependent on the owner's continued relationships with the company's clients will experience difficulty in maintaining those relationships once the owner is gone.

### **Valuing Your Business**

In addition to addressing the transitioning of clients or customers to the successor, where applicable, the Buy-Sell Agreement should also address the transfer of equity ownership to the successor. This would entail the owner considering the various options in determining the purchase price for the transfer, valuation of the company, and the various payment options depending on the "triggering event."

There are many different methods for valuing a business, with some better suited to a specific type of business than others. The method chosen should provide a reasonable estimate of value, be suitable for the intended purpose and be able to withstand legal challenges by the IRS or other opposing parties.

### **Tips for a Succession Plan**

1. It is never too early to start planning. Unforeseen events, such as death and disability, often cause a rapid transi-

tion of the business. The time to begin a succession plan is now. The longer the succession plan is in place, the smoother the transition of the business will be.

- If it is a family owned business, involve your family in the process. Involving your family in the succession planning process serves two purposes: 1) it cuts down family discord later, as each family member knows where he or she "stands" relative to the business; and 2) it allows you to determine the best successor for the business. You may find, in your discussions with your family that not every family member desires to be involved in the business, as they may have their own businesses or careers they desire to pursue. Involving your family also gives you the opportunity to do an honest assessment of the persons desiring to succeed you. While it may have been your great desire to leave the business to your first son or daughter, that person may not have the managerial skills and other skills necessary to lead the business.

- Train your successor(s). Your succession plan should not be simply about transferring ownership; it should also be about training your successors to properly execute your succession plan. There are few things as devastating as watching a business fail that you worked so hard to build. In executing any succession plan, adequate time must be given to train those who are eventually going to run the business.

- Seek outside assistance. You should seek an attorney, accountant and other professional advisors knowledgeable in the succession planning field to assist you with your succession plan.

Putting off business succession planning is a mistake. A proper succession plan can help ensure that your retirement needs are met and that the business you worked so hard to build will continue to flourish for years. ■

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