

BUSINESS SUCCESSION PLANNING

Business succession planning is not only critical to the orderly transition of management and ownership of any company at an owner's death, disability or retirement, but also an integral part of retirement, investment, and estate planning. The first hurdle is to accept the fact that you will not live forever and that you may become disabled and, thus, unable to run your company earlier than you would like to think about. You need to plan for these occasions.

Among the first steps is to articulate your goals concerning the management and ownership of your business.

FOR MORE INFORMATION:

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AS TO MANAGEMENT, ASK YOURSELF:

1. If I became disabled tomorrow, who would I want managing my business?
2. At what age might I want to retire?
3. Who do I want to manage the company after my retirement?
4. Do I want management kept within the family? Do I want a "family council or advisory board" to groom family members for management? If there is more than one family member involved or interested in the business, what role does each family see themselves in down the road?
5. Will I have sufficient income from retirement assets and other non-business assets to meet my cash flow needs at that time?
6. When I retire, will I REALLY want to give up control over the management of the company?
7. Is or will there be a need to consider executive compensation and/or employee/owner retirement planning?
8. Should there be independent representatives on the company's Board of Directors?

AS TO OWNERSHIP, ASK YOURSELF:

1. Do I want to transfer debt and/or equity interests in the company during my lifetime?
2. If so, at what age?
3. Do I want to transfer interests only to family members or to outside third parties?
4. Do I want equity interests owned by my spouse and/or children to be owned free of trust or in trust?
5. Do I want my family owning the company in unequal shares?
6. Do I want to make transfers of voting and/or non-voting interests? (Does my company currently have a distinction between voting and non-voting equity interests? If not, should it?)
7. Do I want transfers to be made by gift or sale?

IN ADDITION, YOU SHOULD CONSIDER ASKING YOURSELF:

1. Who are those individuals most affected by the decisions I will be making or who may have an effect on those decisions?
 2. What are the goals of those affected persons?
 3. What issues do I and the affected persons see as most critical to the smooth transition of the company?
 4. Where do I want my company to be 5, 10, 15, and 20 years from now?
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5. Do I need to implement any covenants not to compete with key employees?
6. If I decide to sell the business at some point, what can I be doing now to enhance the value of the business?
7. Is there a liquidity issue? Do I need life insurance or some other investment or planning to fund a buy-out or to pay estate taxes?
8. If I became disabled tomorrow, would my family have a sufficient income source? Do I have sufficient disability insurance or do I need a supplemental salary continuation plan or agreement with my company?
9. Are there, and, if not should there be, protective provisions in the business's governing documents against transfer in the event of a divorce or foreclosure by a creditor?
10. What is the company's value right now? Has the business been valued recently?
11. What is a fair buy-out price for the ownership interests? How should that price be determined?
12. Do I or does my family have any charitable goals or interests? Gifts of business interests to certain types of trusts and family charitable organizations may result in income or estate tax deductions and may even result in an income stream to you.

AMONG THE TRANSFER OPTIONS ARE:

1. Outright sale of the company to successors (whether family or otherwise). The sale may be for cash or may be an installment sale, or partly each.
2. Straight gift of ownership interests to family or trust for specific family members. You may use the annual exclusion from federal gift tax, currently \$14,000 per donee (\$28,000 per donee for married couples) for a portion of such gifts (if, the gift is made in trust, then the trust must be structured in a certain way for the gifts to qualify for the annual exclusion). Or, you may use a portion or all of your lifetime gift tax exemption (in 2013, \$5.25 million per donor).
3. Transfer of ownership interests to irrevocable trust for family members in exchange for an annuity payment from the trust for a specified number of years.
4. Transfer ownership interests to specially-designed income tax efficient irrevocable trust for family members in exchange for a promissory note.
5. Create and use an employee stock ownership plan.
6. Sell the ownership interests in exchange for a private annuity.
7. Sell the ownership interests in accordance with a shareholders agreement or a buy-sell agreement (which may include some of the foregoing options).
8. Gift the ownership interests to a "split-interest" charitable trust which, after selling the interests at fair market value to a disinterested third party, either (a) pays income to you for your lifetime or a fixed number of years after which the remaining property passes to a family charitable organization (or other charity you designate) or (b) pays income to a family charitable organization (or other charity you name) for a fixed period of years, after which the remaining trust property passing to a trust for or outright to your family members.

Special planning considerations arise if your company is a subchapter S corporation. Such as, there are limitations of the types of permissible S corporation shareholders. Care should be taken not to have stock passing to a trust that is an impermissible shareholder.

In community property states, such as Washington, a non-record-owner spouse may have a one-half community property interest in the record-owner spouse's business interests. It is critical to determine nature of and take into account any community property interests when planning for the succession of the company.
