Estate Planning for Small Businesses

Jonathan J. David
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AUTHORS/ CONTRIBUTORS
Jonathan J. David

PRACTICE AREAS
Business Law
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Family Owned Businesses

As a small business owner, you have worked incredibly hard to make your business a success. What began as an idea is now, due to your vision and hard work, a successful business. As with the balance of your estate, you should plan to make sure that upon your death, your business passes into the right hands and without unnecessary complications. This is where having a comprehensive estate plan is critical. The basic strategies and documents you as a small business owner should consider include:

Will

A will allows you to name who you want to receive your assets, including your business, upon your death. If you fail to have a will, your assets will pass according to state law, which means that the state will control who receives your estate, including the interest in your business.

Living trust

A living trust is similar to a will in that it allows you to name who is to receive your assets upon your death. However, a trust has the advantage of being a private document, and the assets controlled by the trust at death will bypass probate. Assets controlled by a will at death must first go through probate, which is a public proceeding, prior to passing to your beneficiaries. Having your trust own your business at the time of your death makes the transition of the ownership to your intended beneficiaries a much smoother process and keeps the business out of probate.

Financial durable power of attorney

A financial durable power of attorney allows you to appoint an agent to act on your behalf if you are unable to act for yourself. With this instrument, you can give your agent the power to manage your finances and pay your bills, as well as manage the day-to-day affairs of your business, if you are unable to act for yourself.

Succession plan

If possible, you will want to identify who will succeed you in the ownership of your business. In addition, you will need to decide how that individual will succeed to your ownership interest in the business. If your successor is a family member, will he or she inherit your entire ownership interest or will you require that he or she pay for a portion of the business? If your successor is a nonfamily member, you will want to enter into an agreement documenting his or her obligation to purchase the business, as well as the terms of purchase.

If it is your intent to have the business sold upon your death, you will want to plan for that ahead of time so that your family members will be in a position to receive the best possible price for the business when it is sold.

Buy-sell agreement

If you are one of multiple owners of a business, it is vitally important that you and the other owners have a buy-sell agreement. This agreement will require your ownership interest be purchased by the business or the other owners upon a triggering event such as death or disability. Further, it will set forth how the value of the ownership interest is to be determined and paid to your family. Without this agreement, your ownership interest in the business will pass to your spouse or other family members, and it is likely that neither they nor your current partners will want that to happen. This problem can be avoided by proper planning.

Life insurance

Life insurance also can play an important role in small business ownership. The death benefit can provide a source of income to your family until the business is sold — if that is the goal. If a family member succeeds your ownership in the business, life insurance can help cover payroll and other business expenses until he or she gets acclimated to the operation of the business. It also can be used to fund the purchase of your business interest by the remaining owners of a business that has multiple owners.

Failing to take advantage of the basic strategies and documents available to you will cause undue and unnecessary stress to your family, as well as additional costs, which could be significant. These problems can be avoided with proper planning and the execution of the appropriate documents.

An experienced estate planning attorney can review the basic strategies and documents with you in more detail, as well as explain the other types of documents that should be included in a comprehensive estate plan. You also should engage other advisers, such as a business attorney, a CPA and a life insurance professional. These advisers can help guide you through the complexities of owning your business and making sure the transition of ownership upon your death is a smooth one.

Jay David is a shareholder with Foster Swift Collins & Smith in Grand Rapids. He specializes in estate planning; probate and trust administration; and business entity selection, organization and planning. He can be reached at jdavid@fosterswift.com.