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BUSINESS SUCCESSION PLANNING: TOP 10 DO'S AND DON'T'S FROM THE LAWYERS' PERSPECTIVE

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Business succession planning is top of mind as the Baby Boomer generation retires. From a legal perspective, it's essential to navigate the process carefully to avoid potential pitfalls, streamline transition and secure the future of the business, both in times of planned and unplanned transition.

Here are ten considerations when it comes to planning for your business:

1. **<u>Start Early as It's Not Only About Retirement</u>**

   It truly is never too early to start the process. You need ample time to identify objectives, build towards monetary goals, strategize for continuity in times of crises and consider all legal aspects, including tax implications and regulatory requirements. Delaying the process can leave a business vulnerable to unforeseen events, including sudden incapacity of a key player or a paralyzing outside factor.

2. **<u>Incorporate Buy-Sell Agreements</u>**

   Ensure that you implement appropriate agreements and clauses, which outline the process for transferring control or ownership interests. These should cover scenarios such as retirement, disability, or death, and detail valuation methods and funding mechanisms. They can also address power of attorney and other rights necessary to continue operations or wind down the business.

3. **<u>Identify Monetary Goals</u>**

   A common point of contention is the difference in what a business owner wants to make versus what is realistic based on value of the business. By identifying goals early on and then cross-referencing them against objective data, you can work with your team of advisors to identify holes in your plan and strategize for making up ground.

4. **<u>Fund the Succession Plan</u>**

   Without proper funding mechanisms, such as life insurance or a sinking fund, implementing a plan can be financially challenging. Work with legal and financial advisors to understand and plan for the tax consequences of succession. Strategies such as gifting shares or creating trusts can be effective in tax planning.

5. **Identify Assets**

Identify assets and confidential information annually to streamline the other considerations we address. What qualifies as an asset is often misunderstood and, *good news*, is typically much broader than commonly thought of – i.e. digital assets, intangible public perspective, and various intellectual property. By having those discussions early on, which should be protected as confidential information, the succession planning framework moves from theoretical to substantive. Additionally, the confidentiality documents you put in place can also prevent unnecessary speculation and instability within the company.

6. **Involve Key Stakeholders**

Often key players are valued in a similar way to assets, yet it isn't quite as straightforward to ensure their transfer. Consider the perspective of family members, key employees, and advisors in the process to build consensus around the process and provide for their continued involvement *and investment* in the business.

7. **Acknowledge Legacy**

Legacy is embedded in most businesses; the key is identifying it if its continuation is important. By identifying potential successors early and providing them with necessary training and experience to ease the legal process, you pave the way for them to harness excitement about the transition. This also allows you to engrain values that you want to be carried as a legacy, whether they be environment, social, governance or otherwise.

8. **Emphasize Compliance**

The legal and regulatory landscape is vast, and it is easy for something to be overlooked during transition. By emphasizing compliance, you're forced to evaluate potential risks and determine how best to approach compliance with laws governing business entities, taxes, and any industry-specific regulations.

9. **Seek Professional Advice**

Successful business owners recognize today's fluidity in business and the rapid pace of change in most industries; thus, structuring a flexible process is essential. Consult with legal and financial advisors with expertise in business succession planning and are familiar with your industry. Their expertise can help you navigate the complexities of the process and avoid common pitfalls. Failing to seek external advice can result in a lack of objectivity and missed opportunities for tax savings and legal protections.

10. **Regularly Review**

Succession planning is not a one-time event. Annual reviews allow for adjustments in response to changes in the business environment, risk tolerance, personal circumstances, or the legal landscape.

Effective business succession planning requires a careful balance between legal diligence and consideration of the interpersonal relationships involved. By remaining forward-thinking and adhering to these do's and don'ts, you can create a solid foundation for the future of your business.

About the Authors

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