

Employer Alert: Estate Plans For Business Succession After Death

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When someone thinks of the need for proper estate planning, sometimes images associated with the super-wealthy, such as yachts and private jets, come to mind. However, estate planning is not just for the super wealthy. Small and mid-size business owners in particular need an estate plan to provide for succession planning in order to keep the business thriving after the owner's death (and thereby continuing to provide a source of income to the decedent's family).

In keeping the business as a going concern after the owner's death, the issue of who is going to own and operate the business becomes an all-important decision that the business owner ideally would make before his or her death rather than leave it to the grieving family to try to figure out afterward.

For example, if a single business owner has three adult children, one of whom is involved in the business and the other two of whom are not, it might make sense for the business owner, in his or her Last Will and Testament, to leave the ownership of the business to the one child who is involved in the business and to give the other two children equalizing bequests.

Or perhaps the business owner wants all three children to share in the profits of the business but wants just the one child who is already involved in the business to run it and make all of the business decisions; in that case, it might make more sense to reorganize the business into voting and non-voting shares in the case of a corporation (or voting and non-voting membership interests in the case of a limited liability company) in order to leave the voting shares (or interests) to the one child and the non-voting shares (or interests) to the other two children. This can be done even if the business is organized as an S corporation, which is permitted to have only one class of stock; Internal Revenue Code Section 1361(c)(4) provides that a corporation is not treated as having more than one class of stock simply because there are differences in voting rights among the shares of stock.

The above outlines only a fraction of the different scenarios and options available to a business owner in planning for the succession of his or her business. Not including these or other business succession provisions can be disastrous to both the business and the relationships of the family members as they argue over what the deceased business owner "would have wanted." Many families sadly wind up in litigation with each other over this.

Takeaway: If you would like to discuss your own personal situation and formulate a succession plan for your business, please contact [Jo Ann Gambale](#), chair of the [Trusts & Estates Team](#) at Wilentz.

Attorney

- Jo Ann Gambale

Practice

- Trusts & Estates