

Business Sucession Planning: What's New and What's Tried and True

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Jeffrey Weiler spoke at the 2007 Ohio ACTEC Meeting on April 27, 2007. Below is a brief overview of Mr. Weiler's speech:

When planning for the succession of a business, whether you are representing the business entity, family members, employees or shareholders, it is important to first assemble a team to execute the project. Critical team members include an estate planning attorney, CPA, corporate attorney, life insurance advisor, appraiser/valuation expert, key employees of the business and other advisors. After determining members of the team, a team leader and coordinator should be named to help direct the succession plan. The role of spouses, family members and key employees should be determined and their level of involvement should be decided before planning decisions are made.

As the primary business succession plans are made, step by step actions should be prepared and timed to implement the process and keep it moving smoothly. It is essential to then outline the owner's exit strategy, including the owner's retirement date, disability contingency, death and attention to successor management and compensation of successor management. Upon the transfer of ownership, consideration must be given to the value of the business interest that will be transferred as well as when and how assets, including cash and stock, will be received.

When family members will become the new owners of the business, someone should be placed in charge, and it should then be determined if certain family members should not be involved in the business. The estate plan of the business owner needs to adequately and appropriately balance the allocation of assets among family members.

The transferring business owner may choose not to proceed with a lifetime transfer if he or she anticipates being unhappy following the transfer. He or she does need to fill his or her time with stimulating personal activities following the transfer, and should seek assistance if necessary to manage assets received from the sale. It will also be critical that the transferring owner perform financial and investment planning, as well as update his or her estate plan accordingly.

To accomplish all of the objectives of a business succession plan, certain tools are vital, including basic estate planning documents (Will and Revocable Living Trust), a buy/sell and transfer restriction agreement and tax considerations. "Freeze techniques," such as grantor retained annuity trust or a direct installment sale, or "gift techniques," such as a Lifetime Qualified Terminable Interest Property Trust for a gift to the spouse, can be also used.

All of the bases should be covered before the business succession plan is considered completed. Death of an owner or key employee, disability and retirement need to be taken into consideration, as well as the event in which the employment of the equity owner is terminated with or without cause. Other issues to consider include, with respect to a professional practice loss of the equity owner's

professional license, creditor problems, domestic relations issues and equity owner conflict. If that careful thought is put into each of these areas, the business succession plan should be carried out efficiently.