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Estate planning for every business owner

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While good estate planning can be beneficial to everyone, it is crucial for business owners. Your personal estate plan should coordinate with and be consistent with your business succession plan. For example, if you intend to give control of your business to a child who is active in the business, then your estate plan may give voting interests directly to the child through your will or trust. If you have business real estate that is owned separately from the main business, then you also should ensure that the business real estate is passing to such child. A common mistake is to allow such property to pass to "nonbusiness" family members together with nonbusiness assets.

Some additional planning items to consider:

Liquidity and Cash Flow: Will there be sufficient cash flow from your business to support the business and also provide income to your surviving spouse? Are there enough liquid assets for the payment of estate taxes? For business owners with a significant amount of real estate, certain market environments may make it difficult for your estate to sell or refinance properties to raise cash. Life insurance can solve liquidity needs, but consider whether your business should own the life insurance, or whether the use of an irrevocable life insurance trust would be beneficial. If structured properly, the use of an irrevocable life insurance trust can remove the proceeds of the life insurance policy from your estate.

Buy-Sell Agreements: Review and update your buy-sell agreement, or put one in place if you do not have one. Does the valuation mechanism used in the agreement still work - is it a formula, a fixed price, or a value determined by appraisal?

Wills and Executors: Confirm that your will gives your executor the authority he or she needs to carry on, preserve and protect your business interests. Does your will give the authority to borrow money, sign or assume guarantees or other liabilities, make loans to affiliated entities, or vote your shares or membership interests? Business owners who specialize in real estate often have ownership interests in multiple entities, with separate partnerships, separate management companies, and separate forms of financing for each property. Does your executor have the expertise to understand and manage your interests in these entities?

Special Use Valuation: Consider whether your estate could benefit from a special use valuation election. If certain conditions are met, your executor can elect to have closely-held business property real estate valued on the basis of its actual use in the business rather than on the fair market value of its highest and best use (e.g., for real estate development purposes). Discuss with your advisor whether you would meet the conditions for this election. Are there changes you can make now that would give your estate the opportunity to use this election?

These are only a few of the many steps you can take to align your estate planning with your business planning. Contact your tax, estate or business planning advisor to discuss these steps and the many other planning options available to you.

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