

Chapter 31. Business Owner Estate Plan Provisions

While the Estate Planning needs of a business owner include the same issues as non-business owners, your business ownership brings into play a series of additional Estate Planning issues and options to be addressed.

As the owner of a business, you will often have Estate Planning needs which extend beyond the typical Estate Plan. This may be due to certain financial or business needs of the business or because of particular family issues which are already present or may arise upon your death or disability. Many of these matters can be covered with a Living Trust by using a Business Owner Living Trust.

$$\begin{array}{ccccc} \text{Basic} & & \text{Business} & & \text{Business} \\ \text{Estate} & + & \text{Owner} & = & \text{Owner} \\ \text{Plan} & & \text{Living} & & \text{Estate} \\ & & \text{Trust} & & \text{Plan} \end{array}$$

In order to help address the business owner's specific Estate Planning issues, you may want to consider the use of the following tools.

- **Specific Bequest to Business-Active Children.** If you have one or more children who are active in the business and one or more children who are not, you need to consider whether you want to make a specific bequest of your business ownership interest to the active children in your Business Owner Living Trust, so that they have ownership control as well as the valuation benefit on account of their decision to be active in your business.
- **Non-Active Children Equalization.** When the business ownership has been specifically allocated in your estate to one or more children active in the business, an equalizing share can be allocated to non-active children through a specific bequest of other financial assets in your Business Owner Living Trust. If your estate does not have sufficient other financial assets to fully equalize the shares, then at least two other options exist. This can include a split off of non-operating business assets into a separate leasing or licensing entity

which can be allocated to the non-active children. This would still leave the business operating assets intact in the business entity to be owned by the active children. As an alternative, life insurance can be obtained which would help fund the equalization to the non-active children.

- **Family Business Representative.** Typically an Estate Plan will appoint a personal representative (executor) and a successor trustee to handle financial and business decisions for your estate. In those situations where that representative or trustee is not well-equipped to make business decisions impacting your ongoing business, a family business representative can be appointed in your Estate Plan to make business decisions relating to management of the business. You have at least two ways this can be done. First, this representative can be given authority in your Business Owner Living Trust to override your regular trustee's authority. Second, the representative can be viewed as essentially an advisor, whose decisions are subject to the overriding decision-making authority of your regular successor trustee.
- **Business Sale Instructions.** As part of your Fourth Quarter Game Plan, if you have not completed your exit from your business at the time of your death or disability, but believe that the best alternative for the family is that the business be sold, then your Fourth Quarter Game Plan and/or Business Owner Living Trust can contain sufficient details to provide instructions on how and to whom your business can best be sold or transferred should you die or become disabled before you complete your exit.
- **Successor CEO.** Your Fourth Quarter Game Plan and/or Business Owner Living Trust can also designate your recommended successor CEO for the business. This is particularly important if at least two children may each claim that you intended to appoint them to run the company.
- **Contingency Plan Notifications.** Your Fourth Quarter Game Plan and/or Business Owner Living Trust can also contain contingency plan notifications to your family and to your Board of Directors which detail the immediate steps to be taken upon your death or disability.
- **“Sweat” Equity Allocation.** You may decide that your estate is not to be divided exactly equally between your children due to a

difference between the role which your children have played in the success or operation of your business. Your Business Owner Living Trust can include an allocation with regard to your business assets which recognizes the “sweat equity” contribution of those children who have been active in the business but who have been under-compensated based on their contribution to the success of the business.

- **Dispute Resolution.** If you have more than one child, it is possible your estate will encounter a dispute once you are no longer present. Your Business Owner Living Trust can include a dispute resolution provision which prevents a dissatisfied child from disrupting business operations. A dispute resolution provision can range from the appointment of a mediator to help resolve disputes, to instead including a provision which disinherits a child who challenges your Estate Plan.
- **Financial Resource Reserve.** If your business needs your ongoing financial support in order to thrive, then your Business Owner Living Trust can designate that a reserve portion of your estate be held as a financial resource to help support the business and/or its credit needs.
- **Family Council.** Your Business Owner Living Trust can designate a Family Council to be established to enable your spouse and adult children to be apprised of ongoing business operations and to discuss resolution of business matters impacting the family. Depending on the make up of your family and your use of a board of directors, in lieu of a Family Council, you can consider having your children serve on your Board of Directors as either voting or non-voting board members, as an additional way to keep the family members apprised of the ongoing challenges associated with the business.
- **Business Key Person Life Insurance.** This enables the business to receive cash proceeds to help overcome the loss of key personnel.
- **Business Buy-Out Life Insurance.** This enables the company to receive cash proceeds to help fund the buy-out upon the death of an owner and is addressed as part of a Buy-Sell Agreement.

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| <input checked="" type="checkbox"/> Special Bequest to Business-Active Children | <input checked="" type="checkbox"/> “Sweat” Equity Allocation |
| <input checked="" type="checkbox"/> Non-Active Children Equalization | <input checked="" type="checkbox"/> Dispute Resolution |
| <input checked="" type="checkbox"/> Family Business Representative | <input checked="" type="checkbox"/> Financial Resource Reserve |
| <input checked="" type="checkbox"/> Business Sale Instructions | <input checked="" type="checkbox"/> Family Council |
| <input checked="" type="checkbox"/> Successor CEO | <input checked="" type="checkbox"/> Business Key Person Life Insurance |
| <input checked="" type="checkbox"/> Contingency Plan Notifications | <input checked="" type="checkbox"/> Business Buy-Out Life Insurance |
| | <input checked="" type="checkbox"/> Transition, Succession & Exit Plan Matters |

<p><i>To Do List</i></p> <p>√ _____</p> <p>√ _____</p> <p>√ _____</p> <p>√ _____</p> <p>√ _____</p> <p>√ _____</p>
