BUSINESS SUCCESSION PLANNING

Buy-sell Agreement: Agreement to Control Disposition of Business upon Certain Events.

1. Owner's Desire to Sell (Right of First Refusal).
2. Divorce (Sale at Appraised Value).
3. Guardianship (Incapacity) (Sale at Appraised Value).
4. Death (Sale Funded by Life Insurance).

Types of Buy-sell Agreements:

1. Entity Buy-Sell: Business purchases life insurance to purchase deceased owner's interest.
2. Cross-Purchase Buy-Sell: Owners purchase life insurance on each other's life to purchase deceased owner's interest.

Advantages to Entity Buy-Sell:

1. Business in lower tax bracket.
2. If purchase financed, business can deduct interest.
3. Fewer policies required.
4. Purchased policies are subject to income tax.

Advantages to Cross-Purchase:

1. Owners pay for own insurance and cost is not borne by business (unequal ownership bears total cost).
2. Higher tax basis for owners.
3. No potential dividend (if only portion purchased).
4. No potential alternative minimum tax.
5. No potential accumulated earnings tax.

Covenant Not to Compete: Agreement not to compete with with business for reasonable period of time (2 years) and for reasonable geographic area (where business is operating).

Employment Agreement: Agreement of employment to insure business continuity, protect trade secrets.

If there are no co-owners, who will manage business at death? May affect choice of Personal Representative.
May affect choice of Trustee.

If there are no co-owners, who will manage business if there is incapacity or illness? May affect choice of Durable Power of Attorney.

If family member (son or daughter) making personal sacrifices to help business succeed and is interested in carrying on business, can estate plan give this business to family member and compensate other family members with different property (life insurance) for equal distribution?

Should a revocable trust be established to avoid probate and allow a Trustee to operate the business for an extended period of time to improve marketability?

Probate of assets, including businesses, under a will is required to be concluded within 1 year.

How do you value your business?

Do you need key-man insurance?

Do you need disability insurance?

What is your goal with the business? Sell at a certain point? Pass business to children?

Who are your team of advisors? Financial Advisor, CPA, Banker, Attorney.

Do you recommend that your Personal Representative, Trustee, or Durable Power of Attorney work with your team of advisors in continuing your business?

THESE ARE QUESTIONS THAT ONE PERSON CANNOT ANSWER. A TEAM APPROACH WILL BE NECESSARY TO INSURE ALL FINANCIAL, TAX, AND LEGAL ISSUES ARE COVERED.

THANK YOU FOR YOUR ATTENTION.

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Bonus Topics:

Separate legal entity such as corporation or LLC provides owner protection from contractual debts of the business (unless personally guaranteed) and negligence of employee (unless personally supervised).

Separate legal entity does not protect you from liability for your own negligence.

Must sign contracts as an officer of the entity (i.e. John Doe, President of XYZ LLC).

Must maintain the formalities of separate legal entity (separate business bank account, arms-length transactions, minutes, operating agreement or bylaws, ownership certificates) to avoid personal liability (Piercing Corporate Veil).

Protected assets under Florida Law: Qualified Plans, IRAs, 401(k)s, Annuities as long as not purchased to hinder or delay creditors. Homestead (1/2 acre within municipality, 160 acres outside municipality) - Protection forfeited in Bankruptcy if purchased to hinder or delay creditors within 10 years of filing.

Partners in a partnership are personally liable for all business debts. A general partner in a limited partnership is personally liable for all business debts.

Olmstead v. Federal Trade Commission: Single member LLC assets are not protected from the debts of the single member. Concern multi-member LLCs not protected as well.

Tenants by Entirety: Ownership acquired by husband and wife. Benefit. Tenants by entirety property cannot be seized to pay debts of one spouse.

Off-shore trusts: Assets in trust in a foreign country which does not recognize U.S. judgment. Creditor required to litigate in foreign country under civil law rather than common law.