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# Business Owners: Is Your Estate Plan Up-to-Date? (Think Before You Answer)

As most of us know by now, business owners—especially those running enterprises of fewer than a thousand people, typically defined as “small businesses”—are the main drivers of the American economy and also the main creators of wealth in this country. These hardworking men and women make the decisions each day that allow them to manufacture, sell, or distribute products or services; operate profitably; provide their employees with salaries and benefits; pay local and federal taxes; and make their communities a better place.

Most business owners, especially those who have been successful over the long haul, know the importance of estate planning. They realize it is vital to have in place a thorough set of directives for what will happen to their assets upon their passing. But the sobering fact is that far fewer business owners than you might suspect have effectively followed through on that knowledge. Even fewer have estate planning in place that is up-to-date and takes into consideration all the latest legal and business changes that could drastically affect the disposition of their estates.

According to a recent survey by U.S. Trust Company, while business owners are focused on their responsibilities to their employees, customers, and other stakeholders, they may be less attentive to their own estate and business planning. In fact, they could be missing important steps that could end up placing in jeopardy their business, employees, and family financial security in the event of their death. While these individuals are typically wealthier and earn higher incomes than the average population, U.S. Trust's survey found that some of the individuals with the highest net worth—those holding between $3 million and $5 million in investable assets—do not have wealth and estate planning strategies in place that are appropriate to their position. In fact, 55 percent of those surveyed had not established a formal succession plan for their business—and 43 percent of these were over age 67! Sixty percent of those surveyed did not have a comprehensive estate plan, including a current will, healthcare proxy, or durable power of attorney. Almost half (48 percent) were not taking advantage of trusts to protect or transfer assets (most said they "just hadn't gotten around to it"). Notwithstanding all of these findings, 54 percent said they thought the most important goal of estate planning was to minimize estate taxes. Another recent survey found that of those business owners who do have estate plans, the overwhelming majority of the plans—85 percent—were more than five years old.

Clearly, there are thousands—perhaps millions—of very successful entrepreneurs who, while showing remarkable creativity, business judgment, and financial stewardship with respect to the day-to-day matters of their businesses, are woefully underprepared in terms of their estate and business succession planning.

It is vital that owners of businesses of all sizes and types understand the following:

- Tax laws are constantly changing, and these changes have implications for your estate.
- Your company and your industry are constantly changing; your estate plan needs to take these changes into consideration.
- Your personal and family situations are subject to change, sometimes unexpectedly. Your estate plan needs to be reviewed periodically to retain its effectiveness.

Most business owners with estate plans report, for example, that they have increased their wealth since their wills were drafted. With increased wealth comes increased complexity and a greater need for tax planning in connection with any transfer of the estate. Similarly, more than three-quarters say they have experienced some life-changing event (such as marriage, divorce, death of a spouse or a child, or birth of grandchildren) since their estate plan was created. It is overwhelmingly likely that some aspect of the individual's will, trust document, or other crucial estate planning component needs to be reviewed or altered as the result of one or more of these events. In many cases, changes in a partnership, significant shifts in key personnel, or other alterations in the structure of the business could dictate the need for a careful look—at the very least—at plans and strategies for business continuation or succession planning. An outdated estate plan can place all of these important processes in jeopardy.

Business owners should regularly ask themselves a few key questions:

- Have my finances changed—either positively or negatively—since the last time I reviewed my estate plan (such as will, trust, or partnership agreement)?
- Have there been any significant changes in the people who are in strategic positions in my business? Or do I anticipate bringing an adult child or other family member into the business within the next few years?
- Have any of my personal circumstances (such as marital, health, children, or grandchildren) changed since I made my estate plan?
- If I plan for children to receive assets, when and in what form do I intend the assets to be transferred?
- If I plan to distribute assets to children or other heirs, on what basis will I divide them?
- Is all of my basic estate documentation (such as will, trust, insurance beneficiary designations, durable power of attorney, or advance medical directives) organized and in a place known to my loved ones or designated executor? If any of these are stored on a computer, who besides me has access to the logins and passwords?

You should know the answers to these questions, and if it has been more than five years since you reviewed your documents, you should make plans to review them soon.

One final word. Many successful business owners assume, like the 54 percent mentioned above, that tax mitigation is the most important (or only) reason for estate planning. In reality, the number one reason for estate planning is to give you the ability to direct how your assets are distributed in the event of your death. Beware of tax-planning strategies that attach strings to your estate that could inhibit your heirs from doing what you intend with the wealth you've accumulated.

***Stay Diversified, Stay the Course!***

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