

ESTATE PLANNING FOR THE BUSINESS OWNER

If you own a successful business, you have a lot to take care of. The day-to-day operations can consume your time and focus. But making smart decisions about your business also includes planning for the possibility of your death or incapacity. If you expect your business to continue, it is essential to have planning to help ensure success. If you instead expect the business to close down, you should make it as efficient as possible for someone to step in and do so. Ask yourself these questions:

1. ***Is legal documentation in place so that someone can operate the business in the event you suffer from a short-term or long-term disability?*** It's important to know who would step in during that time, and equally important to ensure that they are given legal authority to do so. The terms of the governing documents for your business (e.g. operating agreement or shareholders agreement) and the provisions of your financial power of attorney may each play a role in determining what happens in the event of your incapacity.
2. ***Will your business have sufficient liquidity to operate in the event of your death or incapacity?*** What will happen to the cash flow in the event of your incapacity, especially if you are a key person in the production of income for the business? Insurance may be a solution so that the business is not financially devastated.
3. ***What will happen to your business interest at your death?*** The governing documents for the business may allow other business owners to buy your interest. If so, how is the value determined? Must they pay cash, or can they pay with a promissory note? Do you understand how the governing documents coordinate with your will?
4. ***Do you understand the tax implications for your business upon your death?*** If your total estate is under approximately \$11,000,000 (the estate tax exclusion amount for 2018) no federal estate tax will be due assuming you do not use any of this amount during life. If your estate exceeds this amount, there may be steps you can take during life to reduce or eliminate the estate tax that will be due. Regardless of whether estate tax will be due, you should understand the income tax implications for your business after death.

In addition to planning for the future, it is important that you properly maintain your business now, which includes the following:

1. ***Keep your business in good standing with the Colorado Secretary of State, and with any other states where your entity is registered.*** In Colorado, this requires filing an annual report with the Secretary of State.
2. ***Hold annual meetings of the business owners and document meetings with minutes.*** Taking this step helps show that the business is a legitimate business entity, which is important for creditor protection reasons and in the event of questions from the IRS.

3. ***Treat the entity as a separate entity from your own assets.*** Income from the business should be deposited into the business account, and payments for business expenses should be paid from the account. You may take a salary, and then net profits are distributed to you in the form of dividends or distributions (depending upon the type of entity). Maintain good records, and don't commingle business and personal assets.
4. ***Timely file all required state and federal tax returns.***
5. ***Make sure you understand your legal role in the business entity arrangement, and ensure that documents you sign for the business reflect the role in which you are signing.*** For example, if your business entity is a corporation, you may be a shareholder, director and officer (e.g. President). Day-to-day documents are usually signed by the officers, whereas annual meeting minutes are typically signed by the shareholders, directors or both. If you have a limited liability company ("LLC"), you may have elected to have it be manager managed, in which case day-to-day documents are signed by the manager but certain transactions (as specified in the LLC's Operating Agreement) require consent of the members.
6. ***Assets of the business should be properly titled in the business.*** For example, if the business owns a vehicle, the vehicle should be titled in the name of the business, not in your name. Proper titling helps substantiate the business as a legitimate business entity and also avoids some additional complexity that may occur upon your death if assets are not titled correctly.

Stover & Spitz LLC is pleased to provide a variety of estate planning services, including business succession planning. If you wish to discuss our potential representation in planning matters, please call us at 303-682-0433 to set an appointment.