DO YOU NEED TO INCLUDE A BUSINESS SUCCESSION PLAN IN YOUR ESTATE PLAN?

“With unemployment rates at historic lows, many workers decided it was time to pursue their dream of starting their own business.”
The entrepreneurial spirit is alive and well in the United States. In fact, it is flourishing once again in spite of, or because of, the recent recession the country suffered through. With unemployment rates at historic lows, many workers decided it was time to pursue their dream of starting their own business. After all, they had nothing to lose.

Whether you finally took the plunge only recently, or you have been a small business owner for decades, you undoubtedly put your blood, sweat, and tears into getting your business off the ground. It would be a shame then to see your business fall apart because of your death or incapacity. Without a well thought out business succession plan, however, that is precisely what is likely to occur should you suddenly be unable to remain at the helm of your business.
Small business owners have long been considered the backbone of the American economy; however, toward the end of the 20th century the number of new small businesses startups in the U.S. declined significantly. That changed though during the recent recession as small businesses began popping up again everywhere with many of them flourishing. The result is that 50 percent of the American gross domestic product is the result of family owned businesses. Moreover, small business owners are currently responsible for about 80 percent of all new jobs created in the U.S. Clearly, the small business owner is back in America and likely here to stay this time around.

Getting a small business off the ground is not easy. Succeeding as a small business owner is harder still while passing down a successful family business to the next generation can be extremely challenging. Statistically speaking, your family owned small business only stands a one in five chance of making the transition from one generation to the next. Planning ahead can greatly increase the odds of a successful transition when the time comes.
Most small business owners are heavily invested – both financially and emotionally -- in the business. Failure is not seen as an option. If you have managed to get to the point where your business is consistently profitable, the odds are favorable that you and your family depend on the income your business provides.

What happens to the business, and consequently the income derived there from, should you be incapacitated or die? The answer to that question remains elusive unless you have planned for the possibility by creating a business succession plan. Imagine, for the moment, that you are incapacitated or die tomorrow.
Then ask yourself the following questions:

1. If you are incapacitated tomorrow in a tragic accident, who will take over the immediate day to day control of your business?
2. Is it clear to your employees, business associates, and family who will take over?
3. Does the individual designated to take over have the legal authority to do so?
4. Will your family continue to benefit from the business’s success in your absence?
5. What happens if you are unable to return to managing the business? Who will take over in that situation?
6. Will your business be included in the probate of your estate? If so, what will happen to the value of your interest in the business if it is sold?
7. If your business is a family owned business have you prepared the next generation to take over? Have you set up the proper legal structure for the business to facilitate the transfer to the next generation?
8. What will the tax implications be for your business should you die?

Unless you can answer each of the questions satisfactorily, your business is in danger should you suffer an incapacitating event and/or die. Creating a well thought out business succession plan will dramatically increase the likelihood that your business will survive your death or incapacity as well as help ensure that your loved ones are taken care of in your absence.
THINGS TO CONSIDER WHEN CREATING YOUR BUSINESS SUCCESSION PLAN

Just as your overall estate plan is unique, reflecting your individual needs and goals, so will your business succession plan be tailored to fit the facts and circumstances of your life and business. There are, however, several common considerations that small business owners face when they sit down to create a business succession plan, including:

- What is the current legal structure of your business?
- Do you plan to sell the business or pass it down?
- Who will be your successor?
- Is your chosen successor prepared?
- What is your business worth and how will it be valued at the time of your death?
- How will any tax liability be handled?
The unique nature of a small business makes it imperative that you consult with an experienced estate planning attorney when deciding how best to protect your business and your loved ones from the uncertainty and confusion that often follows the incapacity or death of a small business owner. Some common tools and options that may be considered though include:

- **Gifting in your Last Will and Testament** – if your business is a sole proprietorship you can simply gift the business and all the business assets to someone in your Will. This option, however, comes with several drawbacks. For example, the business assets could be lost to gift and estate taxes if your estate lacks the necessary liquidity to cover the tax bill.
**Buy-Sell Agreement** -- this option is often used when there are partners involved who are not family members. In short, a buy-sell agreement allows you to determine ahead of time what your interest in the business is worth or, in the alternative, provides an agreed upon method of valuing the business when the time comes. Your partner(s) agrees to purchase your interest in the business should certain events occur. This ensures the continuation of the business and a fair price for the sale of your interest in the business, the proceeds of which will then become part of your estate or will go directly to your loved ones.

**Family Limited Partnership** – If your business is a family owned business a family limited partnership, or FLP, may be best for you and your family. You are able to maintain majority control and day to day management of the company for as long as you wish; however, your successor can also begin to learn the business before you are no longer available. In addition, there are typically some significant tax advantages to creating a FLP.

Every small business in the United States is as unique as the entrepreneur who started the business. As a small business entrepreneur you undoubtedly want your business to succeed and thrive long after you are gone. Talking to an experienced Illinois estate planning attorney about
incorporating a business succession plan into your overall estate plan is the first step in ensuring the survival of your business as well as providing for your loved ones.

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About the Author

Robert N. Nash

Robert N. Nash is a partner in the law firm of Nash Nash Bean & Ford, LLP. The law firm has offices in Geneseo and Moline, Illinois and conference facilities available throughout Northwestern Illinois. Mr. Nash chose the estate and business planning arena because he believes it provides a positive force in his clients’ lives. He practices preventative, rather than remedial law. Robert Nash focuses on all aspects of estate planning, including estate, gift and income taxes, trust and probate administration, real estate, and business.

Nash Nash Bean & Ford, LLP
www.nashbeanford.com

Geneseo
445 US Highway 6 East
Geneseo, IL 61254
Phone: (309) 944-2188
Fax: (309) 944-3960

Moline
5030 38th Avenue, Suite 2
Moline, IL 61265
Phone: (309) 762-9368
Fax: (309) 944-3960