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ESTATE PLANNING FOR THE CLOSELY HELD BUSINESS

When considering planning for a closely held business, especially a family owned business, there are a few basic principles that must be considered. Once considered, the owner of that business will have a better understanding of the process and how best to hand down perhaps a lifelong effort to family members.

The first consideration is whether you want to hand down a business to future generations or hand down the business value for beneficiaries to enjoy. If it's the former, you're probably better off leaving the business in your estate. If it's the latter, you may want to consider a lifetime sale and have the estate benefit from your capabilities in getting the best outcome from the sale, rather than leaving it to someone else to handle for you after you pass on.

This type of estate planning is complicated merely because there are so many considerations involved. Some of the issues may be: How is the business organized? Is it a company, an LLC, an C-Corp, a sole proprietorship, etc.? What state is it organized in? Is there voting control in the business, and what is your ultimate control in that regard? What is the value of the business? What are the future prospects of the business? And the list goes on.

A sole proprietorship is the easiest to evaluate. The business and assets are held by one person and any employees are employed by the proprietor with no legal interest in the company and no ownership rights. The most complicated is the corporation. Simply due to the fact that there are so many varieties of corporate standings, with so many nuances for ownership and control by so many people, valuing this type of business when it comes to estate planning can be a significant process.

As a general outline of the process, the initial step in determining whether you want to hand down a business or the business's net worth is valuation. Every business has value (negative or positive). Typically, the business will be appraised and all aspects will be valued from the furniture to the value of the namesake. Then the business will undergo a series of further evaluations including earning capacity, capacity to pay out a profit, goodwill, historical sales, outlook of the economy and the type of trade the business is in, etc. Once a value is placed, you can make a better determination if you even have enough value to distribute to beneficiaries or would a beneficiary be better off assuming a business to continue after your gone.

The last, but not the least of which, are the taxation issues with the transfer of business or business shares. As always, there are guidelines as to the

calculation of taxes and credits, and those guidelines and calculations can have a serious effect upon the considerations listed above.

This is just a very brief introduction to estate planning regarding your business ownership. However, if you are a business owner, you really have to consider what will happen to the business or its value when you pass on and how you want it to be a part of your estate plan. If you haven't made even the initial considerations in this regard, I suggest you seek a consultation with both your attorney and accountant to start the process.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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