

DON'T LOSE THE FAMILY BUSINESS: PLANNING FOR BUSINESS SUCCESSION

By Kristen M. Jackson, Attorney

Q: “The business that provides for our family is solely owned by my husband. As no one in the family is familiar with the business, what could happen if my husband becomes ill or dies? Will the business be lost?”

A: The business could fail or be lost entirely if your husband doesn't take precautions now to financially protect the business from such disaster.

Often, business owners do not contemplate what would happen to that business if the owner were to die or become incapacitated. Is there a transition plan in place? Who would take over ownership and operations? Consider the following situations.

The Business Owner

Robert and Donald each owned their own business. Robert was a sole proprietor while Donald was the sole shareholder of a small corporation. Each had a staff of five employees. Robert managed all aspects of the business, including daily operations. Donald was the president of his corporation but named one of his employees who managed the business with him as vice president.

Impact of Hospitalization

Robert and Donald each had a heart attack and were hospitalized. None of Robert's employees knew enough about the business to run it during his absence. Robert was too ill to direct his employees from his hospital bed, so business virtually stopped until he recovered. On the other hand, Donald's vice president was able to run the business while he was hospitalized.

Impact of Death

Robert and Donald each had a second, fatal heart attack within a year. Robert still had no one capable of running the business after his death. As a sole proprietor, he was the business, and because his heirs knew nothing about running the business and Robert made no provisions to transfer it to anyone else at his death, the business was closed and the assets disposed of through the probate of his estate.

Buy-Sell Agreement

Donald had taken the precaution of setting up a Buy-Sell Agreement with his vice president. The employee purchased the business from Donald's estate for an established price. The business continued to operate as before

under the vice president's management until the sale was completed. Donald's heirs did not have to worry about disposing of the business assets.

Don't Ignore Consequences

Had Robert designated someone to run the business in his absence or to take over at his death, liquidation could have been avoided, and the business could have continued to operate even during the probate of his estate. Robert's heirs would not have been burdened with finding buyers for the assets, and his personal representative could have merely transferred the business to a previously selected successor at an already established price.

Business owners should not ignore the possible consequences of failing to plan for business continuation or transfer. Ownership interests in businesses are like any other assets; they must be transferred to someone or some other entity when the owner dies.

While probate is generally required to accomplish the transfer, the owner can designate who will take ownership of the business interest in a Buy-Sell Agreement. Otherwise, the business interest will pass to the spouse, children or other heirs of the deceased owner.

While this may be desirable in some cases, often the owner may have a business partner who does not want to be in business with the spouse or children of the deceased owner. Or, the spouse or children, who may know nothing about the business, do not want the business interest and would rather sell it. A Buy-Sell Agreement can make it easier on everyone involved; the owner, those remaining in the business, and the deceased owner's surviving family.

Kristen M. Jackson, Attorney, has offices in both Orlando and Lake Mary. Call 407.363.9020, or visit www.JacksonMontoyaLawFirm.com. ■



Photo by jeffhawkins.com