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Estate Planning for Businesses

We are frequently retained by business owners to prepare their personal estate plans. They are often unaware that planning is also necessary to ensure the orderly transition of their businesses. Consider this: What will happen to *your business* if you become disabled? If you and your business partner wish to part ways? If you retire? If you die? Whether you are the sole owner of your business or own it with others, any one of these events, whether it happens to you or your partner, can destroy the relationships that have been nurtured and interrupt the operation and continuity of the business.

Typically, when more than one person has an ownership interest in a business, the participants know each other, they are comfortable working together, and they contribute individually to the process of running the business. They disregard the reality that even the "ideal" business relationship is only temporary and fail to plan for any of the inevitable contingencies that can interfere with "business as usual." For example, what happens if one of the business owners becomes disabled or retires and can no longer work in the business. Does that individual continue to receive a salary or share in the profits? If so, for how long? Who will assume that person's responsibilities? Is it expected that he or she will sell his or her share of the business? If so, is this in writing? Is there any requirement that this business owner's interest be sold back to the other owner(s)?

Similar issues arise when a business owner dies. Do the remaining owners want to be in business with a surviving spouse or the children of a deceased owner? What experience do they have? What contribution are they able to make to the business? Does it justify the salary or share in the profits that they expect to receive. Alternatively, is there a plan to purchase the interest of the deceased owner? If so, how will that interest be valued? How will the purchase be funded?

Without appropriate agreements in place, an owner could sell his or her interest to a third party who is a stranger to the other owner(s). So, instead of being in business with someone you know and trust, you now have a relationship with someone who you are meeting for the first time.

"Succession planning" is estate planning for businesses. It assures an orderly succession to the ownership and management of a business in the event of a disability, death, falling out among the business owners, or any number of other circumstances that could potentially interrupt the flow of business. In order to ensure that a lifetime of work is not destroyed, the business participants should have a shareholder or partnership agreement and a buy-sell agreement in place.

While most business owners *intellectually* agree with the need for business succession planning, often they procrastinate. Regardless of the cause for the delay, i.e. not knowing where or how to begin, the misconception that no one can do as good a job, or even an inability to relinquish control, the result is the same: an end to a business that could have continued to prosper if business planning had been undertaken.

Creating a plan before a crisis occurs will help protect each business owner and the business itself. Unfortunately, once the crisis occurs, it is unlikely that an equitable agreement can still be reached. If you have not done so already, there is no better time than now to put a business succession plan in place. We at Berwitz & DiTata LLP will be happy to assist you in developing a plan that is right for you.