



Snapshots™

OWNING AND MANAGING A SMALL BUSINESS: ESTATE PLANNING

NO MATTER YOUR AGE, IT IS NEVER TOO EARLY TO BEGIN PLANNING FOR THE TRANSFER OR SALE OF YOUR BUSINESS AS PART OF YOUR ESTATE PLANS. WHILE THIS MAY BE A SITUATION OCCURRING MANY YEARS IN THE FUTURE, A PROPER PLAN CAN HELP ENSURE THAT YOUR BUSINESS ASSETS PASS ON TO YOUR HEIRS EFFICIENTLY AND IN LINE WITH YOUR GOALS.

Legally, a Sole Proprietor is indistinguishable from the business itself, which limits the ways you can transfer the business after your death. Business assets become part of the owner's estate and are distributed in accordance with your Will. As with any estate assets, the value of those business assets is subject to provincial probate taxes as well as federal income tax if they have increased in value since the time of purchase (called an 'unrealized gain'). The Executor of an estate is legally obligated to pay any estate debts before distributing assets to beneficiaries. There should be provisions in your Will to provide your Executor with the necessary money to pay those debts. Detailing which assets can be sold to raise cash or using life insurance are two ways to deal with this issue. I can help you with either of these options or suggest others.

Succession Planning

If you have family members such as children who are willing to take over your business, you can create a provision in your Will that allows them to assume your business assets after any estate debts have been paid, as discussed above. However, where family members are unwilling or unable to take over the business, you will most likely need to sell and distribute your business assets.

The Buy-Sell Agreement

As a Sole Proprietor, you may establish a legal Buy-Sell agreement, which directs your Executor to sell the business to a particular individual or individuals, perhaps a key employee. The major advantage of the Buy-Sell agreement is that your Executor knows exactly who the assets are going to and is not burdened with the task of trying to find a willing buyer or having to sell the assets quickly. Finding a willing buyer for the business assets will probably take time and it is a good idea for you to consider the issue long before there is any need to transfer your business assets.

As far as the taxation of a Buy-Sell agreement, it is assumed under tax law that when a person dies, all assets are sold at Fair Market Value (unless the assets are being transferred to a surviving spouse). Any resulting taxes will have to be paid by the deceased's estate.

Conversion to a Corporation

Many Sole Proprietors eventually convert to the corporate structure, particularly if business is going well. The corporate business structure is very different from a Proprietorship and there are definite implications for succession and estate planning. If you are contemplating converting to a Corporation, I can provide you with more information on corporate estate planning.

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