

# Estate and Succession Planning

**ASSESSMENT:  
ESTATE AND SUCCESSION PLANNING**

# 6. Estate and Succession Planning

## OVERVIEW

Decisions made in the course of a business owner managing his operations can have major impacts on estate and succession planning and dynamics. In our view, the process of 'beginning with the end in mind' should be part of any business owner's next strategic planning retreat.

At a minimum we recommend that estate planning documents be done and updated today — if not already done — and that succession planning begin, at a minimum, five years before a planned succession event. We have found that businesses that operate with an active succession plan in place are more well run, create more owner cash flow, and are more valuable than those that don't."

### Estate Planning Basics

The following is a list of tools that form the basic foundation of any estate plan.

- Wills are legal documents that specify what happens to your assets when you die. If you do nothing else, write a will.
- Trusts are legal entities that own assets, are managed by one or more trustees, and have designated beneficiaries. They play a vital role in estate planning because they allow you to control and protect the assets while minimizing tax liability.
- Life Insurance is typically used as a source of funds for buy-sell agreements and paying estate taxes.
- Family Limited Partnerships (FLPs) allow you to receive discounts when making gifts or transferring assets, protect assets from creditors and lawsuits, shift taxable income, and remove highly appreciated assets from the estate.
- Employment Contracts can provide lifetime income to you and/or your family upon your death, disability, or sale of the business.
- Asset Protection Entities allow you to protect your assets from creditors and realize significant tax savings.

To create an effective plan, you must first create a vision. Next, set concrete goals and objectives. Work with an estate planning firm that has experience:

- minimizing taxes.
- creating a succession plan for business.
- navigating complex family dynamics.

Review and update your plan every 2-3 years, more if needed.

### Advanced Estate Planning

Three specific taxes apply to estate planning: estate, gift, and generation skipping transfer taxes (GSTT). You can dramatically reduce or even eliminate these taxes by:

1. **Gifting**— Gifting occurs while you are still alive and lowers the value of the estate, thus reducing the estate tax.
2. **Discounting**— Discounting is gifting in such a manner that your assets appear smaller to the IRS. Consult your planning team for specific advice.



3. **Leveraging**— Leveraging allows you to gift assets in a manner whereby you retain control of them, enjoy the income from them during your life, and then remove them from your estate to avoid the taxes. Again, consult with your individual planning team for further instruction.

### Trusts

When used properly, trusts allow you to control and protect your assets while limiting liabilities. There are many kinds of trusts, but most common is the funded living trust, in which you hold title to all your major assets (except your home) while you are alive. Funded living trusts give you immediate and total control over your assets should you die or become disabled. Other popular trusts include charitable trusts, family legacy trusts, enhanced income trusts, deferred inheritance trusts, and family foundations. Each kind of trust is complex and must be managed properly. A poorly managed trust will do untold damage to your family, business, and estate. Use only experienced professionals on your estate planning team and be sure to establish the following trustees for each trust:

1. **Business trustee** — An experienced manager to run the business.
2. **Financial trustee** — An experienced financial manager to handle any investments in the trust.
3. **Distributing trustee** — Someone to handle any monetary distributions to the family.
4. **Watchdog trustee** — Someone to make sure the other trustees do their jobs properly.

### Estate Planning Team

Your spouse is your most important partner. Involve him or her (and your entire family) in your planning decisions. This will prevent a lot of family strife after you are gone. Beyond that, assemble a team of advisors to include your estate planning firm, an experienced estate tax attorney, and your CPA. Each member of the team should intimately understand your goals and objectives. Keep this team updated as changes in your life occur that affect your plan by utilizing an estate planning manual. An estate planning manual allows you not only to update these parties, but also memorialize why you made the decisions you did. Again, this will prevent a lot of family strife in the future.

### Communication

Communicating your estate planning goals and objectives is essential to your plan's success. We recommend the following tools for ensuring that everyone involved understands the plan and works toward the same outcome.

- Family letter of intent. This identifies specific estate planning goals, provides clarity and direction, and directs key decisions during the planning process. This is the single most important estate planning document.
- Annual common-sense business letter. This letter addresses critical business succession issues in the event of your premature death or mental disability. Update the letter each year and give a copy to your family and each member of your team.
- Annual common-sense personal letter. This letter to your spouse and family members should include a list of all your assets and accounts, locations of all legal documents, computer passwords, and hidden assets. Instructions for disbursement of sentimental items should also be included in this letter.
- "I love you" letter. This lets family members know what they meant to you during this time and is often the most valuable thing you can leave behind, especially if you have young children.
- Family meetings. These provide a way to open the channels of communication to discuss business, personal, and estate planning issues.

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Print this page and place a check mark next to each sentence that speaks to your organization. For each section, 1 check or less = severe problem area; 2 = area needs major improvement; 3 = area needs moderate improvement; 4 = area needs minimal improvement; 5 = system is world-class in this area.

### *The Basics*

- I have a signed, legal will.
- My spouse and I both have funded living trusts in place.
- I have a business succession plan in place should I die prematurely or become mentally disabled.
- I use only trained specialists as my estate planning advisors.
- I review and update my estate plan on a regular basis.

### *Advanced Estate Planning*

- I make full use of the annual gifting credit and lifetime exemption in my estate plan.
- I have the appropriate trusts in place to reduce estate taxes and transfer and protect my assets.
- I have separate business, financial, distributing, and watchdog trustees for each trust.
- I have an employment contract in place between myself and my business that guarantees a stream of income in the event of my death or disability.
- I use family limited partnerships (if appropriate) to reduce the size of my estate and pass highly appreciated assets on to my heirs.

### *Estate Planning Team*

- I involve my spouse and family in important estate planning decisions.
- I have a carefully selected team of specialists that includes (at minimum) a family wealth counselor or estate planning firm, and experienced estate tax attorney and my CPA.
- In addition to their individual areas of expertise, I make sure each member of the team understands my overall estate planning goals and objectives.
- I update my team when personal, financial, or life circumstances dictate a change in my estate plan.
- I have an estate planning administrative manual to keep people up to date and memorialize the reasons behind key decisions.

### *Communication*

- My family and I have created a family wealth vision and a written family wealth letter of intent.
- I have a written common sense business letter which I update as needed.
- I have a written common sense personal letter which I update as needed.
- I have an "I love you" letter or video for my family and loved ones.
- I regularly educate my children about the responsibilities of running a business and inheriting wealth.