BOUHAN FALLIGANT
ATTORNEYS & COUNSELORS AT LAW

Thinking About the Unthinkable: Businesses require estate planning, too

By Eva Fedderly For BiS

Estate planning is not just for older people who have retired. Once a person owns a business, it's important to create an estate plan; the key is to have a plan in place in the event of incapacity or death so that loved ones and the business are safe.

“As soon as you have anything to give away, you need to do an estate plan. This means you could be in your twenties or thirties,” said J.B. Blackburn, Jr., a partner at Savannah law firm Wiseman Blackburn, which handles estate planning. “The reason for that is, businesses don't just transfer upon death.”

The estate plan, which should comprise everything a person owns — from business assets to checking accounts to life insurance policies — will map out in advance what a business owner wants to happen to the business when he or she dies. An estate plan can be for a modest business or a large business.

“Estate planning can be very simple and straightforward,” said Blackburn. “When it can get complicated is when you and your spouse have a combined estate worth over $5 million. Then you need to consider estate taxes if you're a high net worth individual.”

Most of Blackburn's clients are under the $5 million estate range. When people come in with businesses and estates worth more, he'll refer them to another law firm with expertise in high net worth estates.

Before scheduling an estate plan meeting, it's important to consider various questions. This can range from who should handle the business affairs if the business owner is to die? If the business owner has minor children, who will take over the business? And when the children are mature, who will take over the business then?

“If you have children and one child works at your business and the rest don't, you probably don't want to treat them all the same, as far as the company goes. You can create a method for the other children to buy in or buy of some of the stock in the company,” said Blackburn.

In an estate plan, the business owner may also choose to leave the business to one child and leave other assets, such as real estate and brokerage accounts, to the other children.

Blackburn explained when he began working in the business, he believed that when a child turned eighteen, the child should receive the estate.

Blackburn then had a case where a 21-year-old man inherited a house, car, and money.

“I got hired to work on a criminal case this man was involved in,” said Blackburn. “He was about to lose a mortgage on the house, the car was sitting in the garage up on jacks, and he was sitting in jail with no money and had no way to do anything.”

“Seeing that situation where he was given everything at 18 and had basically [wasted] it away, it made me realize, ‘Do you really want to give every child everything at 18? Or are you better off waiting until they get a bit more mature before you hand it all them?” Blackburn asked.

He said typically a 25-year-old is mature enough to take on an estate. But some wait until their children are 35.

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>
> Melanie Marks, a partner with Bouhan Falligant

Savannah local Ryan Hughes, chief executive officer and founder of CORE Consulting and Development, drafted his first will in his late twenties when he and his wife Betsy's twin boys were born.

“The will was the start of my estate planning,” said Hughes. “The kids inspired us to do it. I didn't have a huge estate then. The main reason was to make sure our kids went somewhere if Betsy and I both died. The will is the main part of estate planning because it ties you to everything else.”

When Hughes drafted his first will, he didn't own CORE; he was an employee at another development company. Since then, Hughes has revised his will twice.

“We re-did our will last year because we have more assets and net worth. Betsy and I wanted to make sure the personal and company assets are put into a trust,” Hughes said.

It was important to the Hughes that their twins have access to the trust if, and only if, they attend college. Hughes put his brother in charge of the trust and the twins would receive a certain amount of money every month.

As far as what happens to CORE if Hughes were to unexpectedly pass away, Hughes hasn't decided yet.

“It's an ongoing process,” said Hughes, who started CORE two years ago. “If the boys are old enough, they could run it. Or my brother could sell CORE. But I'm still figuring out what I want to do with the company. It's something I'm considering."

If a business owner doesn't have any estate documents in place, and if the business owner is the sole shareholder, the business can be put in jeopardy, according to Melanie Marks, a partner with Bouhan Falligant,a law firm that specializes in estate planning, estate and trust administration, elder law, and real estate law.

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Before business owners meet with an attorney about estate plans, it's important to consider different scenarios.

"You have to be careful with who you trust with any business," said Marks. "If you have a lucrative business and you have several children, but only one or two are in the business, you must decide if you are okay treating your children differently. You have to tailor estate planning to each situation."

Marks explained if a business owner has no offspring and is a sole proprietor, to think about if there's an employee who may want to take over the business.

"Does it make sense to start giving or selling interest to that individual? If there is no family member interested, we ask the business owner about their key employees. Most businesses have a key employee or two — someone who runs the shop when the owners not there. Does the business owner want to sell some interest now to that employee?" Marks said.

Business owners should ask themselves if they die unexpectedly, who should step in with the business. Should the business be sold or liquidated?

"For multiple owner entities, most have agreements restricting transfers during life and at death, either in the form of operating agreements (LLCs), shareholder agreements, buy-sell agreements, cross purchase agreements, among other things. Agreements are typically negotiated early on but can be revised to address changing circumstances. Agreements are often secured by life insurance," explained Marks.

Many of Marks' clients come to her with a plan and she'll execute the wills and agreements, depending on what the clients' requests and wishes.

It is crucial for business owners, no matter how old they are, to have estate plans in place. For those in need of estate planning, prepare questions and scenarios and meet with an attorney to ensure loved ones, the business, and employees are secure.

Practice Areas

- Estate Planning

Attorneys

- Melanie L. Marks