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Business Survival Planning for the Sole Proprietor

One question frequently asked by a sole business owner is, “What will happen to my business when I die?”

To answer this question, begin by examining the issues of a **closely held business** in your estate. The planning concerns generally involve three areas: administration of your business during the estate settlement period; continuation of your business after your estate has been settled; and taxes and related estate settlement costs.

Often, solo business owners will choose to organize their business as a **sole proprietorship**. Let’s take a look at the possible advantages and disadvantages, as well as planning opportunities, of this form of business ownership when it comes to your estate.

The Pros and Cons

A sole proprietorship is a business entity owned and managed by one person. Simplicity is one of the major advantages of this form of business. No completed articles of incorporation need to be prepared, and there are few administrative costs associated with starting the business. However, if the business is conducted in a name other than that of the owner, most states require that the name of the business and owner be filed as a matter of public record.

Another advantage of the sole proprietorship is the flexibility and freedom of action enjoyed by the owner. There are no associates to consult when making business decisions. Unlike a corporation, the owner’s activities are not limited by statutes, corporate charters, or bylaws. In addition, the owner of a sole proprietorship is entitled to all profits generated by the business.

On the other hand, there may be a distinct disadvantage to a sole proprietorship when trying to continue the business after the death of the owner. In the absence of specific arrangements to the contrary, the business ends and the business assets and liabilities become the assets and liabilities of the owner’s estate. A majority of states have enacted statutes that authorize the executor or administrator to continue the business temporarily, in order to avoid loss to the heirs. However, application must be made to the court for continuing the operation of the business. Anyone who does so without

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Pension Plan Limits Get a Boost

Cost of living adjustments and legislated increases will boost the dollar limitations for certain pension plans in 2009. Adjustments are as follows:

- The limitation on the annual benefit under a defined benefit plan increases from \$185,000 to \$195,000.
- The limit for annual additions to a defined contribution plan rises from \$46,000 to \$49,000.
- The limitation that defines a highly compensated employee increases from \$105,000 to \$110,000.
- The limit for elective deferrals to 401(k) plans, 403(b) plans, SAR-SEPs, and 457(b) plans rises from \$15,500 to \$16,500.
- The dollar limitation for catch-up contributions for individuals age 50 or over to 401(k) plans, 403(b) plans, and 457(b) plans increases from \$5,000 to \$5,500.
- The limit for elective deferrals to SIMPLEs rises from \$10,500 to \$11,500.
- The compensation amount for determining eligibility for SEPs increases from \$500 to \$550.
- The annual compensation limit for qualified plans, SEPs, and TSAs rises from \$230,000 to \$245,000.
- The dollar limitation concerning the definition of a key employee in a top-heavy plan increases from \$150,000 to \$160,000.
- The dollar amount for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribu-

tion period rises from \$935,000 to \$985,000, while the dollar amount used to determine the lengthening of the 5-year distribution period increases from \$185,000 to \$195,000.

However, the following remains unchanged:

- The limit for elective deferrals to IRAs remains at \$5,000.
- The dollar limitation for catch-up contributions for individuals age 50 or over to SIMPLE retirement accounts remains at \$2,500. Additionally, the dollar limitation for catch-up contributions for individuals age 50 or over to IRAs remains at \$1,000. ■

Source: The Internal Revenue Service, www.irs.gov.

Helping Employees Overcome Challenges with EAPs

When personal problems become acute, it is not always possible for employees to leave their troubles at the door when they arrive at work. Marital or other family problems, the death of a family member, depression, financial worries, substance abuse, or high levels of work-related stress can often interfere with an employee's ability to perform effectively on the job. Recognizing that otherwise committed and productive employees can often overcome these problems with some professional help, a growing number of companies are adding employee assistance programs (EAPs) to their benefit packages.

Without replacing the medical benefits provided by health plans,

EAPs offer confidential access to a range of services designed to help people cope with problems associated with a variety of mental and physical health conditions. EAP vendors gen-



erally provide their business clients with quick and easy access to coun-

seling services for a set, per-employee monthly fee. After contracting with an EAP provider, employers pass on to their employees a free, confidential hotline number they can call to talk to a professional counselor. The counselor will assist the caller in developing a plan for coping with the problem, which may include obtaining additional services, such as psychiatric or legal assistance, smoking cessation or weight loss programs, financial advice, or substance abuse counseling.

Many EAPs have staff psychologists who are available to meet with employees in person to discuss their concerns in greater depth or instructors who are available to travel to the

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workplace to conduct group training sessions on issues such as stress management or weight control. Some EAPs also offer employees assistance in obtaining emergency back-up care for children or elderly family members, or establishing permanent child-care or eldercare arrangements.

The supplemental wellness services offered by EAPs have been shown to reduce the number and duration of disability claims, and even lessen the demand for more expensive forms of health care. A 2007 study conducted by the Hartford Financial Services Group found that employees of companies that offered access to EAP services were less likely to be absent due to mental health issues. Similarly, a study by Blue Cross Blue Shield of Minnesota showed that when em-

ployees used EAP services, self-reported productivity rose 8.5%.

Compared with other types of benefits, EAPs may be relatively inexpensive. Most EAP vendors allow employers to select the type and level of services best suited to the needs of their workforce. When weighing the options, employers should verify that the EAP vendor employs licensed, professional counselors. The firm should also be capable of delivering the necessary services within the local area and in a timely manner. Once an EAP provider has been selected, informational materials about the program should be distributed to all managers and employees, and a representative of the EAP provider may be invited to conduct an orientation session with

employees explaining in greater detail how the program works.

While an estimated two-thirds of all U.S. employers—including nearly all large employers—offer access to EAPs, many smaller companies have yet to sign on for EAP services. Yet, confidential support services are useful for employees of companies of all sizes. When managers notice that an employee is struggling, recommending that the employee call the EAP hotline may be more appropriate and constructive than disciplining or firing an otherwise valuable member of the workforce. With just a little extra help from an EAP, many people can face their personal challenges successfully. ■

Tips for Getting Paid Promptly

Customers who do not pay their bills on time are a problem for most businesses. But, there are steps you can take to improve your chances of receiving payments on schedule, while meeting the needs of your clients. Here are some tips for making the payment process a little easier:

Set up a payment schedule. Establishing a payment schedule may help to eliminate uncertainty for both the business and the customer. Requesting smaller payments, rather than a single large check, may also be more manageable for the customer, while providing a steady income to the company. The payment schedule can be arranged according to certain dates or specified milestones in the delivery of services.

Draft solid contracts. Regardless of what type of payment schedule you agree upon with the client, make sure the terms of the arrangement are clearly specified in a written contract that has been signed by both parties. The contract should include details not only of the work you have agreed to perform, but also of the terms of payment, including the billing procedures and the penalties incurred for failure to pay on time, such as late fees.

Implement invoicing processes. To simplify the invoicing process, consider using a software program that automatically drafts and delivers invoices and reminders. Whenever possible, mail invoices well in advance of the payment due date. For longer-

term projects, send out monthly statements summarizing the invoices paid to date and the payments outstanding.

Expand the types of payment you accept. Increasingly, Americans are paying their bills with plastic, rather than cash or check. While there are some costs associated with accepting payment by debit and credit cards, taking payment in these forms improves the chances of timely payment and may attract a wider range of customers.

Keep the customer satisfied. A customer who sees that you are making concerted efforts to satisfy his or her needs may be more willing to pay for the work. Take the

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authority may be liable for any losses or expenses, even if he or she was acting in good faith.

Provide for the Future

If a sole proprietor does not want to change the form of his or her business, but does want the business to continue after his or her death, the planning concerns involving the administration of the business during the estate settlement period and after the estate has been settled need to be addressed. The proprietor's **will** may give the **executor** certain powers during the period of estate administration: 1) the power to retain the business interest indefinitely; 2) the power to do everything possible to operate the business successfully; 3) the power to reorganize the business, incorporate it, or merge it with another business;

and 4) the power to borrow money, if necessary, to help the estate meet its liquidity needs.

In addition to these discretionary powers, the will may also include a provision that relieves the executor of personal liability where duties are exercised in good faith. In order to help minimize potential problems, the assets and accounts of the sole proprietorship may be placed in a **trust** with the **trustee** granted authority to continue the business during the applicable period.

Regardless of the form of business organization, there is often the need for adequate cash to pay funeral and administration expenses, personal and business debts, and possible estate taxes. It is important to remember that directions in the will permitting continuation of the business will not

be allowed to interfere with the right of existing creditors and tax collectors to receive their money when the proprietor dies.

One tool to help ensure the estate has the cash needed to settle its affairs is **life insurance**. The proceeds of a life insurance policy can help provide liquidity to pay bills, provide income for family members, and protect the continuation of the business. In addition, the insurance may be owned by an **irrevocable trust** to keep the proceeds from being taxed as part of the business owner's estate.

As a sole proprietor, the continuation of your business may be of prime importance to you. Your qualified financial, tax, and legal professionals can help you develop estate planning strategies to ensure that your business will live on. ■

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time to discuss options with your customers, and give them a chance to express any issues they may wish to see resolved. If you are encountering problems that may interfere with customer satisfaction, clear and honest communication will be essential.

Remain flexible. While it is useful to have certain billing policies in place, customer payment preferences will vary. Be open to customers who suggest alternative arrangements, provided

they are reasonable and meet your needs. Consider offering a number of different payment plan options, thereby offering customers choice and flexibility.

Issue friendly reminders. If a client fails to pay on time, try to give the benefit of the doubt. To avoid conflict, remind the client in a professional manner that payment is due, and that the payment is needed to meet your own commitments and operate your business. Asking for the custom-

er's cooperation—rather than threatening to take him or her to court—often produces better results and could help you retain a valuable client.

Every business must contend with the ways in which payment is received for goods provided or services rendered. Establish clear and flexible payment policies, with the needs of your clientele in mind, to improve your chances of receiving payments on schedule. ■

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