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As seen in SmartCEO Magazine

Any one of us could be hit by the proverbial “bus,” leaving our businesses and loved ones in a precarious situation. Will they survive this collision?

With some thoughtful planning, you can vastly improve the consequences your company and others will face.

Business Planning

First, you should be grooming one or more successors for your leadership role. These individuals should be familiar with all of the key aspects of the business and have solid relationships with your employees, customers, and vendors. But more importantly, these people must embody the values and exemplify the culture of your business.

One client was ready to anoint a particularly ambitious member of his executive team as the successor leader when word leaked out to the rank and file. A riot ensued. Every vice president in the company and plenty of other employees threatened to quit. The proposed successor was cutthroat and had risen to the top ranks by stepping – roughly – on the heads and shoulders of his colleagues and taking credit for others’ work. Wisely, the CEO reevaluated the situation and put the promotion on hold. Ultimately, he chose another member of his executive team as his successor. This new leader enjoyed a great relationship with his colleagues, fostered humane and thoughtful management and continued a legacy of leadership that reinforced the best of the company’s values. To this day, that new leader guides the company through challenges and to new successes.

But successful transition requires more than just a leader. You need a team. One of the most critical aspects of succession planning for a business of any significant size is the creation of a capable executive team. This group should include individuals that can manage each critical division of your business, such as sales, HR, operations and finance.

Further, you actually need a succession plan. You may not want to broadcast this plan to your employees. In fact, in most cases, you should confine disclosure of the plan to a limited circle of advisors and key leaders in the company. But you should nevertheless plan for the worst. You may be familiar with the old saying that for the lack of a nail, a kingdom was lost. Your succession plan is that critical nail. Each succession plan should take into account the particular needs of your business, such as the following:

- Consider the tax consequences your estate will face and how that might force a sale of the company.
- Structure your company’s loan covenants so that succession does not accelerate loan repayment. Further, involve your likely successor and executive team with your lenders so that any transition will be seamless.
- Avoid or phase-out your personal guarantees of any company contracts.
- Create an agreement that provides for the orderly transfer of your interest in the company. This agreement may involve the sale of your interest in the company to existing partners or to other company leaders.
- Provide your successor and other executives with increasing responsibility, especially tasks and projects that will build relations and confidence with your company’s key stakeholders.

With these and other considerations in mind, as well as the assistance of your advisors, board of directors and executives, you can create an effective succession plan.

Protecting Your Family

This part of succession planning is difficult, and many people don’t talk about much less create – a plan for the protection of their family. It is not for lack of caring. It is just,



quite understandably, a difficult issue for many folks. The procrastination is so prevalent, it makes you wonder if people think they are going to perish the minute they sign their wills.

But you should consult with a qualified estate-planning attorney to discuss the particular needs of your family. In some cases, you will be able to save vast amounts of money, which otherwise would be needlessly paid in taxes. In other cases, you will make sure your estate goes where you want it to go. One of the tragedies of not writing your own will is that if you don't, your home state will write one for you. In that situation, your estate may very well pass to people you would have left out, and those who deserve the benefits of your estate may be left with less or none of what you want them to receive.

Furthermore, effective estate planning is a constant process. Estate laws and taxes constantly change. Family and personal relationships also change. In the past few years alone, there have been wild swings in the exemptions from estate taxes and the tax rates on the non-exempt portions of estates. It would be wise to check in with your estate planning attorney at least every three to five years – and more often when you face dramatic changes in your personal circumstances – to see if modifications to your will are required.

You also should provide guidance for those closest to you. In many cases, business leaders are people with widespread and far-flung investments and projects. Gather in one place the materials that reflect these matters or provide a roadmap to their location. Too often I have heard of family members ultimately finding insurance certificates and life insurance policies stuffed in places like old sock drawers. Good instructions will prevent your demise from becoming a wild goose chase for your loved ones.

Protecting Yourself

This part of the plan is the most difficult, and almost no one tackles it. Yet you need to plan for the possibility that one day, you won't be able to act on your own behalf. Protecting yourself can take a variety of forms, but a couple of notable parts are a power of attorney and medical instructions. Your lawyer should explain the details. In general, a properly drafted power of attorney – often called a durable power of attorney – will allow someone to act on your behalf if you are incapacitated.

On the medical side, a properly drafted document often called an advance medical directive will help guide doctors in carrying out your medical directions. Understand, though, that there may be resistance to your instructions. Obtain the assistance of a skilled lawyer and be absolutely clear about your wishes.

The challenges of succession – both professionally and personally – don't go away if you ignore them. The need for planning exists. The results are worse if you ignore the difficulty. On the bright side, many people take great comfort in knowing that they have thoughtfully planned for the business and people they cherish.

ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

ABOUT OFFIT KURMAN

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

Wherever your industry, Offit Kurman is the better way to protect your business, preserve your family's wealth and resolve your most challenging legal conflicts. At Offit Kurman, we distinguish ourselves by our quality and breadth of legal services—as well as our unique operational structure, which encourages a culture of collaboration and entrepreneurialism. The same approach that makes our firm attractive to legal practitioners also gives clients access to experienced counsel in every area of the law.

Find out why Offit Kurman is The Better Way to protect your business, your assets and your family by connecting via our Blog, Facebook, Twitter, Instagram, YouTube, and LinkedIn pages. You can also sign up to receive LawMatters, Offit Kurman's monthly newsletter covering a diverse selection of legal and corporate thought leadership content.

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