

Part III: Developing the New Wealth Transfer Plan

In the previous article, I discussed how the goals and concerns of each family member are uncovered through individual interviews with family members and spouses. Once the family's goals with respect to the business are understood, the next step is to incorporate them into a new plan for wealth transfer. There are many ways that the transfer of family wealth can be accomplished. At this point in the process we take time to consider each of them. The goal is to review all the options with the purpose in mind to identify those that will make the most sense in this particular case.

Transfer Alternatives

Here's a listing of some of the most common transfer options and a brief discussion of each.

Wills and trusts

Wills and trusts are valuable tools for estate and business planning but they are not a panacea. Simply leaving the business to your son in your will might work, but if your estate needs cash for taxes and final expenses, the transfer might never happen as planned. Instead, the business may have to be sold or stripped of its value in order to raise the cash the estate needs. Nevertheless, a will and perhaps a trust will likely be a part of a well-designed transfer plan.

Gifts

Another valuable tool for transferring ownership of the business or other estate property is to use gifts. If you want your son to be an owner of the business you can simply give him shares of stock or partnership interest. The problem is there are limitations on the value of gifts that can be made without tax consequences. Still, gifts of business interest and/or other estate assets can be a viable part of a wealth transfer plan.

Buy-sell Agreements

Another tool for passing business ownership is through a legally binding arrangement called a buy-sell agreement. The buy sell agreement is a legal document that binds a buyer and the current business owner to an exchange of ownership under certain conditions and for a pre-determined price.

Reorganization

Sometimes a transfer of ownership in a business can best be accomplished by reorganizing it. For example, many first-generation businesses are operated as sole proprietorships. That simply means that the entrepreneur owns and operates the business as an extension of his or her personal property. To transfer part of the

business to another person, a son or daughter, for example, the business might be reorganized as a partnership.

In other cases, the reorganization might be more involved. A business might become incorporated, creating greater flexibility in ownership transfers because of the ease with which shares of corporate stock can be sold or gifted. Other plans might call for the business to be reorganized as a family limited partnership, keeping control of the business in the hands of the current owner but allowing future growth to accrue to someone else in the family.

Sale

A business can be sold to the next generation using installment payments, thereby creating retirement income for the seller. This is an attractive option in many situations, but the challenge of funding the installment payments can be sizeable. The problem is critical because if the business fails, the seller's retirement income disappears. Nevertheless, installment payments can be an effective part of a wealth transfer strategy.

Other factors

There are a number of other factors to keep in mind when developing the new wealth transfer plan.

Tax considerations

As alluded to earlier, there are many ways to transfer ownership of a business. Some offer tax advantages, some cause adverse tax consequences. The new plan must be designed to take advantage of tax savings wherever possible and avoid tax traps.

Legal documents

Many elements of the new plan will require legal document drafting. As discussed above, only the attorney can meet this need. A well-designed plan will identify the documents needed and the major provisions of each. It will be up to the attorney to iron out the details.

Estate plan

Although the driving force in creating the new plan may be business continuation planning, estate planning cannot be ignored during the planning process. Creating a business continuation plan and estate plan independently of each other can result in one defeating the other – an undesired consequence to say the least.

Insurance and other financial products

Creating the liquidity necessary to make the new plan work may call for life insurance or some other financial product. Insurance, in particular, can sometimes be problematic if there are health issues in the family. As part of the plan development process, these issues must be explored. If it turns out some financial products will not be available, that must be considered as the plan design unfolds.

In every other respect, the plan design step is relatively straightforward. The input from the family interviews is organized into common family objectives that drive the development of the major plan components. This culminates in a plan design that encourages inter-family communication and pragmatic decision-making. In the end, the plan must be supportable by the entire family, not just the owner. This necessitates a high level of open communication with all the family members and the owner's other trusted advisors.

The new plan design, when completed, must meet all the tax, legal and financial goals as well as the family objectives identified in the earlier steps. In the next article, I'll discuss how the new plan is presented to the family.