

ASK A LAWYER

Business owner should plan for the unexpected

Develop a succession strategy

Q. I started a business 30 years ago from the ground up. Most of my personal wealth is tied up in the business. What should I do to make sure my family can get that wealth if I am no longer around?

Every business owner needs to plan for the expected (retirement) and the unexpected (death or disability). A closely held business is frequently the primary component of a business owner's wealth, but a lack of planning can zap the value of that wealth.

There are five possibilities for business continuation:

- Family succession is a frequent goal, yet statistically only 30 percent of family businesses survive the second generation. To succeed, the next generation must develop leadership skills; learn how to deal with employees and vendors; understand finance; and know how the business works. These skills can take a long time to develop.

- Employees can take over the business. An employee stock ownership plan, or ESOP, can enable existing employees to buy the company and provide a fair value to the business owner or to his or her heirs.

- Stockholder, partnership or operating agreements that address death, disability and disengagement can map the future of the business and provide a buyout to the business owner. Those agreements identify triggering events that force or allow an owner to sell his share of the business to others.

- The sale of a business to a third party, after death or disability has occurred, is the choice of last resort. No one can predict whether there will be a market for a business whose owner has suddenly died or become disabled, and "fire sale" prices never satisfy the surviving family.

- While a sale through an initial public offering may be the ultimate dream for a business owner, it is never achieved soon after a business owner dies, becomes disabled or retires unless the IPO planning is very far along.

The saying that "no one plans to fail, but fails to plan" certainly applies to business succession planning. Consult your lawyer.

Barry Schwartz is a member of the corporate, finance and business transactions department at Cole, Schotz, Meisel, Forman & Leonard, P.A., the largest law firm in Bergen County. He can be reached at bschwartz@coleschotz.com.

Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com. This column is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

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The Record BUSINESS

TUESDAY, NOVEMBER 20, 2007

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THE MARKETS

S&P 500

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