

If you spent your life building a business that you intend to leave to your children, spouse or other family members after your death, addressing ownership and control of the business should be one of your top priorities in putting together a comprehensive estate plan. While there are a variety of estate planning tools available, some are better than others for transferring a family-owned business, and it may be the case that other documents are either necessary or perhaps more appropriate for addressing your specific desires as well.

Why Estate Planning is Critical for Business Owners

Many people make the assumption that their business will automatically transfer to their children or spouse upon their death. While it is true that Texas law provides for a person's assets to transfer to certain family members by default (in the absence of an estate plan), there are numerous factors that make relying on the default rules of "intestate succession" inadvisable. For example:

While the law provides for a decedent's assets to transfer to his or her heirs upon death, (i) if you have a spouse and children, they will each be entitled to a share of your assets, and (ii) the law does not specify which asset(s) go to which family member(s).

In the absence of an estate plan, a decedent's assets must be distributed through the probate process. Probate involves time, expense and a potential for disputes that can all be avoided by putting a comprehensive estate plan in place.

If you die without an estate plan, your business may ultimately end up in the hands of your family members (in most cases); however, you will not know for certain which of your heirs will obtain an interest in the business and there will almost certainly be

costs and delays that negatively impact your family while also leading to business interruptions.

Estate Planning for When You Own a Private Business

So, as a business owner, you need to plan ahead. But, what exactly should you do?

The answer, as you might expect, depends on a variety of factors related to your unique family and business circumstances. A will generally is not the best tool for addressing business succession – a trust is a more-likely candidate as it provides greater flexibility while also avoiding probate. Ownership restrictions in your business's governing documents can be effective as well, and you may also want to explore a prenup, postnup or marital property agreement to address certain marriage-related considerations.

Once you establish which family member(s) will take over your business, you then need to make sure that he, she or they will be fully-equipped to do so. In most circumstances, this requires development of a business succession plan that covers issues ranging from how to access secure files and bank accounts to providing training on the day-to-day tasks involved in running the business. There are a number of formalities that you will need to address as well, and these should all be addressed in the context of your broader estate plan.

Learn More About Business Succession

Planning | Contact The Nordhaus Firm

If you are a business owner in Texas and would like more information about estate planning and how to avoid probate, feel free to contact us to arrange a complimentary initial consultation. To speak with a McKinney probate lawyer in confidence, call (214) 726-1450 or request an appointment online today.