



EXITING YOUR BUSINESS IN STYLE

The Importance of Using a Systematic Process in Business Exit Planning

BY JEFFREY A. KERMAN AND MARK W. MCGORRY



The final article in our Seven Step Exit Planning Process article series will focus on Step 6: Business Continuity Planning, and Step 7: Personal Wealth and Estate Planning. Given the nature of today's world, this planning is invaluable and will allow our business owner clients to make much more informed financial and estate planning decisions.

As we prepare to guide our business owner clients through the biggest financial event of their lives, the Exit Planning Process helps increase the likelihood of a successful sale or transfer of the business, all with a significant role for you as their attorney. Let's discuss...

STEP 6: BUSINESS CONTINUITY PLANNING

Business Continuity Planning encompasses a wide range of consequences that may follow the departure of a majority owner or a member of a controlling ownership group because of death, disability, retirement or termination. These issues frequently keep business owners awake at night wondering what could happen to their ownership interest and to the business itself. Business Continuity Planning protects the owner's right to receive payment for their interest, provides certainty about what they may be required to pay for the interest of a co-owner and supports the business after an owner's departure so that the business can continue to thrive as an ongoing entity.

THE SEVEN STEP EXIT PLANNING PROCESS

- Step 1: Owner Objectives
- Step 2: Business and Personal Financial Resources
- Step 3: Maximizing and Protecting Business Value
- Step 4: Ownership Transfers to Third Parties
- Step 5: Ownership Transfers to Insiders
- Step 6: Business Continuity Planning
- Step 7: Personal Wealth and Estate Planning

Generally, owners can benefit from the Business Continuity Planning step if they:

1. Are no longer comfortable with the "unwritten understanding" that they have with their partner(s) about what they would do if one of them dies;
2. Believe that their spouse would be incapable of running the business if the involved business owner spouse were to die or become incapacitated, or

3. Wish to protect the income stream that supports their family should something happen to them.

If these statements apply to the Business Owner Client's situation, the next step is to ask the Business Owner:

- Do they want to give themselves the best chance to receive their full value for their ownership interest if certain events were to occur (such as death, disability or retirement)?
- Do they want assurances that they will pay fair value if they are the ones required to purchase the ownership of a co-owner?
- Do they want to put a written structure in place so that the business can stand on its own, be financially independent from the owner and continue to thrive after the owner is gone?

POSSIBLE RECOMMENDATIONS TO ENSURE BUSINESS CONTINUITY:

- Business Insurance for Continuity Planning
- Stay Bonus Plan (for current employees)
- Create Business Continuity Guidelines
- Buy-Sell (Shareholder) Agreement
- Wage (Salary) Continuation Plan
- Retaining Key Employees After Death or Disability
- Plan for Financial Independence of the Company

STEP 7: PERSONAL WEALTH AND ESTATE PLANNING

Business owners are unique in the world of personal wealth and estate planning because their businesses typically represent a significant portion of both their personal net worth and their annual income. If the business owner has children working in their business, the planning becomes even more complex. Step 7 seeks to create a well thought out plan that addresses the protection of personal assets, while managing current and future wealth and promoting harmony within the family.

Therefore, Exit Planning is an excellent way to actively work with your Business Owner clients.

The ideal Exit Plan (one that provides the business exit you desire) includes a strategy to help you preserve your hard-earned wealth from unnecessary taxation when it is transferred to your family. However, in order to preserve wealth, business owners must take steps *before* they actually have it. In other words, to realize all of the potential benefits of various wealth preservation techniques, owners must make plans *before* they convert the value of their businesses to cash.

The foundation for wealth preservation planning is found in the answers to two of the questions we discussed in Step One of this Exit Planning process:

1. How much wealth do they want when they exit their company? The follow-up question for parents is then: how much wealth do they want their children to have?
2. How long before they leave their company?

Using the client's answers, the client (and their advisors) can then choose the planning technique that will best preserve the client's wealth, provide for their family and minimize their tax bill.

Generally, owners can benefit from the Wealth and Estate Planning step if:

1. They have their business and personal assets so closely intertwined that they cannot plan for one without also planning for the other in the event of their death;

2. They want to balance their estate among children – those involved in the business and those who are not – in a manner that is fair;
3. They want to protect their heirs from the negative effects of Estate taxes.

POSSIBLE RECOMMENDATIONS FOR PERSONAL WEALTH AND ESTATE PLANNING:

- Existing and Recommended Estate Planning Documents
- Personal Asset Protection Planning
- Personal and Family Insurance
- Transfers of Specific Non-Business Assets
- Personal Wealth Management Plan
- Allocation of Business Cash Flow After Death
- Bequests to Key Employees Upon Owner's Death
- Transfer of Business Real Estate Upon Death

IN CONCLUSION

Wealth preservation planning cannot help any of us cheat death, but it can help our business owners' clients deal with taxes and achieve financial security. Most business owners (including Attorneys!) work in their business and not on their business. Given the new Estate & Gift Tax laws that currently exist through the end of 2012, these planning decisions could not be any more important or timely. The time for action is now.

Mark W. McGorry, JD, CFP, CPC, CLU, AEP is a financial advisor who assists clients with the accumulation and distribution of assets in a tax informed manner. His education includes a J.D. from Fordham University School of Law and a Master of Science in Financial Services from the American College.
Contact: MMcGorry@WealthPartners.com

Jeffrey A. Kerman, JD, CWS is a financial advisor and Certified Wealth Strategist who utilizes investments and insurance planning strategies to assist clients in accomplishing their financial and estate planning goals. Previously, Jeff was an estate planning, elder law and tax attorney in Westchester County. As an independent advisor, he offers securities through First Allied Securities, Inc., a Registered Broker/Dealer, Member: FINRA/SIPC.
Contact: JKerman@WealthPartners.com