Legacy Planning Starts Now

The 6 steps you should take right now to preserve and transition family wealth created by your business

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DON'T LET UNCERTAINTY ABOUT TAX LAW delay framing the legacy you want to leave. Having a well-designed plan will exponentially increase the likelihood of achieving your goals. Remember: only one in four businesses survives to the second generation, and only one in ten businesses are successfully transitioned to the third.

Step One: Establish goals and objectives—create a legacy plan.

Your plan doesn't need to be perfect; it may change over time. You may need to have a longer-term plan (such as transitioning or selling your business) and a contingency plan to bridge the gap.

Step Two: Incorporate a business continuity plan.

Death or disability should trigger a plan that addresses who has the power to vote the stock and that details interim successor executive leadership.

Step Three: Determine your needs for cash flow and access to capital.

Create liquidity outside your business, diversify your wealth and consider deferred compensation arrangements to provide cash flow. Separate business real estate from the operating company to add flexibility.

Step Four: Execute an estate plan that implements your wealth-distribution wishes.

Consider how your personal and business wealth should be distributed. This plan should be reviewed periodically.

Important decisions include determining beneficiaries and the limitations/protections to be provided, identification of Fiduciaries, and how to equitably treat active and inactive children in the business.

Step Five: Consider how estate taxes may disrupt your wishes.

Each spouse currently has an exemption of $12.06 million. Over and above the exemption, the rate is a flat 40%. This exemption automatically drops by about half on January 1, 2026. Figuring out an estate-tax-minimization plan is essential. Look to insurance as a possible solution.

Step Six: Explore the possibility of large, irrevocable transfers.

- If you are willing to transfer value but not control, consider separating value from control through a stock-recapitalization agreement.
- Understand the power of low interest rates, valuation discounts for lack of control/minority interest and lack of marketability.
- Consider estate "freeze" techniques such as installment sales to intentionally defective grantor trusts and grantor-retained annuity trusts, which can freeze the value of your taxable estate while providing cash flow after the business interests are transferred.
- Understand how your charitable objectives can assist in cutting your estate-tax burden.
- Use irrevocable structures (LLCs/FLPs/Trusts) to hold wealth. These structures can allow you to move growth outside your taxable estate and the reach of your creditors and, if circumstances change, allow access to the transferred assets. They can also be structured to avoid estate taxes in perpetuity, and provide divorce and creditor protection for your beneficiaries.