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Once Removed: **Business Succession Planning: How to Get Started**

Episode 59 Summary

Prior episodes discussed the family business as a key asset and component of a client's estate plan. Many founders or owners hope to pass their businesses on to next generations so the business continues to be sources of family wealth, cohesion and identity.

Those episodes also identified the potential risks that could arise at the owner's death — especially estate taxes and family conflict.

In light of those challenges, the founder or owner might wonder: Where do I even begin? This episode summarizes some of those risk and provides ways clients can begin the exercise of that business succession plan.

Transcript:

(0:00):

Hello and welcome back. I'm Steve Murphy, a trust and estates attorney with McGuireWoods LLP, and this is Legacy Planning, Once Removed, my podcast on family, legacy, property, taxes, and everything else on my clients' minds.

For those who are returning, again, welcome back, and for those who are new to the podcast, again, welcome.

On this podcast, we try to help people with their overall legacy plan, how to build it, and how to work towards it, how to safeguard and preserve it.

So, we have a tagline here. We say: Walk like you leave footprints.

This is the third episode on business succession planning.

I've mentioned before that in many cases; a client's legacy plan will include an important asset like a family business or closely held business.

In the two previous episodes on this topic, I talked about these kinds of companies. I used the term family business or closely held business, and I talked about this particular perceived challenge of estate tax that might be due upon an owner's death.

And I talked about a few specific strategies to mitigate or manage that tax.

And then in the more recent episode, I talked about another real danger lurking of the family business causing tension and dispute after an owner's death, not just based on ownership, but based on these three facets of economic benefit, control, and exit.

And again, I use this metaphor of a plane.

(01:38):

Some people say running a public company can feel like flying a large plane, and then running a family company might feel like flying a small plane.

But dealing with succession after the death of an owner or founder, that can feel like landing a small plane.

And in that prior episode, I worried that, yes, taxes could cause for a liquidity crisis and a bumpy landing, but disputes about ownership and governance could lead the company, and maybe even the family itself, to crash and burn.

And in that prior episode, I left with a statement that there's no right or wrong answer to this way to structure the succession plan of the business.

But I realized that there actually is a wrong answer, and that wrong answer would be if there's no plan or no thought given to this by the owners or the founders.

So, in this episode, let's spend just a few minutes trying to answer this question. I get this question a lot.

Where to begin? How does the owner or founder even begin to formulate a succession plan?

Well, I think that answer is pretty simple.

Right now, ask the question: what does your estate plan provide based on its current terms? Just sketch that out.

(02:58):

First of all, what does the overall estate plan say?

Is it based on intestacy, based on default rules where there is no will? Is it based on a will? Is it based on a revocable trust or irrevocable trusts?

All of these are concepts we've talked about in other episodes.

Will there be probate upon the death of an owner or founder?

And how about estate tax?

Will there be a liquidity crisis upon the death of an owner or founder?

It might be helpful to ask the CPA or tax preparer to sketch out that anticipated estate tax liability and look back at that first episode of some ways to mitigate or manage that liability if properly planned for.

You could also ask the question of whether there will be any income tax implications upon the death or sale of a company later on.

And then you can work through the actual structure of the estate plan.

Who will own the company after death?

Now, I know I commented in my prior episode that we want to parse out ownership, but let's think broadly here. How will the shares of the company be owned?

Will it be owned outright by certain family members?

(04:10):

That is, with no layer of asset management, no restrictions on governance. Or will the ownership be held in trust, perhaps with a third-party trustee or co-trustee?

Remember that if assets are held in a trust, then technically the trustee is the one who has legal title and real control over those assets.

And in the case of a family business, this question of who acts on behalf of the shares can be critical to understanding the estate plan.

Second question let's think about the control of the company. I just mentioned, will the shares be held outright or will it be held in trust? Will there be a trustee or co-trustee who acts on behalf of those owners?

And then let's take one step deeper.

Who will actually control the company?

Are there voting shares, non-voting shares?

Will someone hold a majority or supermajority position?

It's helpful to just sketch all that out. I find very helpful just a simple flowchart of these different issues.

And then lastly, let's think about exit.

Are there provisions in the documents that provide for the sale of the company, and who decides?

Are there provisions that allow one owner to require their shares to be sold to others, or that require other owners to sell their shares to that one owner, thereby consolidating control?

(05:39):

And an important question we could ask is, does the client envision that some families would anticipate exiting or wanting to sell the company?

And then after sketching all that out, importantly, this is the next question: how does all that sit with you, the client?

Are there any areas of concern? Would you be concerned if the company is sold within a certain period of time? Would you be concerned if ownership is skewed towards one group or another?

I find that to be a helpful exercise just to start the conversation with yourself and with your advisors about this business succession plan.

In the prior two episodes, I commented on a few strategies that could be used to address any of these concerns that could arise.

So yes, we've seen that the business succession can be rife with uncertainties and potential tension.

But we've also seen that if properly planned for and properly implemented, the succession plan can lead to a smooth landing of that plane and further safe travels.

I'm Steve Murphy and this has been Legacy Planning Once removed my podcast on thoughtful legacy planning.

Thanks for listening.

And until next time: Walk like you leave footprints.