Key Wealth Insitute

Six Estate-Planning Questions for Business Owners

Article produced by the Key Wealth Institute's team of experts

The following is a hypothetical but common situation experienced by a fictional family. It can help you avoid making the same business mistakes and provide the best options for your heirs and your company.

James Keefe sat nervously in his advisor's office. Until the day before, he had been president of Keefe Automotive Sales, one of the region's largest new-car dealerships. Now, since being forced out of his family's business by his younger brother and his mother, he was out of a job and angry. Naturally, his first thought was to sue those responsible for his misfortune.

After his father's death, James received 49% of the stock in the family business. Another 49% share went to his brother. The remaining 2% — the swing vote — was held by their mother.

James's father — the founder of Keefe Automotive Sales — brought him into the business early and taught him well. When his father died, James assumed all responsibilities for sales and became the acknowledged leader in the business. His brother, Dave, handled the bookkeeping and other administrative matters.

Despite the economic slump that hit the region, the business persevered under James' stewardship. It had a long-standing tradition of service and good name recognition because the elder Keefe had pioneered the new-car business in the suburbs.

Because of his dedication to the business, James had not spent much time nurturing family relationships. Family friction developed. A confrontation was inevitable.

James had always assumed that his superior abilities and position as president and board chairman would enable him to win any family showdown. Unfortunately, he was mistaken. At a special meeting of the board of directors of Keefe Automotive, James was removed from his leadership roles, fired as an employee, and given three months of severance pay — after 25 years in the business.

James naturally felt victimized … not only by his mother and brother but by his deceased father. By neglecting the most important remaining task — planning his estate — the elder Keefe made his son an unintended victim.

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The unfavorable business transition experience described in this hypothetical example is sadly a common scenario. With the help of an experienced advisor, James' father may have avoided such unintended consequences by creating a solid business transition plan to ask and answer these six crucial questions:

1. **How can I provide for an equitable distribution of my estate among my children or other beneficiaries?**

   Many business owners want to benefit their children equally. Diminishing fighting among siblings that causes family rifts and, inevitably, expensive litigation is a preferred goal.

   Creating a solid and documented estate plan and communicating such a plan to the next generation protects your family from disagreements and your estate from unnecessary litigation expenses.

2. **Who should control and eventually own the family business?**

   A very important question to ask yourself: Who should control and own the family business? This is directly tied to how and what legal steps you should complete to transfer your business. Many business owners want the next generation to continue operating the business. You need to determine whether this is a feasible option or if a third-party or key employee sale is more likely. Regardless, it is important to have a written and communicated business transition plan.

3. **How can I use my business to fuel the growth of my estate outside my business interests?**

   Many savvy business owners leverage their business interests to fund other opportunities and routinely take distributions from the business. It is imperative to understand how your business is structured to make any necessary changes that do not meet your outside funding goals.

4. **How do I provide for my family's income needs, especially those of my spouse and dependent children, after my death?**

   Establishing and implementing long-term trust and tax plans can provide financial stability and peace of mind to your family after you are no longer there to advise them. For instance, contributing your assets to a perpetual dynasty trust in a jurisdiction like Delaware can provide an income stream to your family, while allowing them to control the investment direction of the assets and protect the assets from depletion by creditors, taxes, and, in some cases, spendthrift family members.

5. **How can I help preserve my assets from the claims of creditors during my lifetime and at my death?**

   In some circumstances, contributing your assets to an irrevocable trust during your life or establishing a trust via will at death works to maximize creditor protection of your assets for your family's current and future benefit. Some states permit you to contribute assets to an irrevocable trust during your life, routinely receive funds from the trust, and protect the trust's assets from future creditors.

6. **How can I minimize income and transfer taxes (estate, gift, and generation-skipping)?**

   Estate depletion from income and transfer taxes is a very common concern for business owners. Creating trusts and implementing tax strategies that best fit your goals provides the best opportunity to maximize tax savings. So, it is best to plan early and work with your advisor and other professionals to structure your business and personal assets effectively.

As a business owner, your thoughtful answers to these questions, followed by appropriate implementation and documentation with an experienced advisor, may well prevent your experiencing a situation like the one faced by the hypothetical James Keefe, supporting a smooth business transition for all parties involved.

If you have any questions about creating a successful business transition plan, please contact us to discuss your particular situation.

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