Your Law Firm: The Next Generation

Good Succession Planning Ensures Continued Success

There exists among business owners an ambivalent attitude toward succession planning. It's not unlike the sentiment many people have toward preparing their wills. They know a will is important. They know it will make life easier for their heirs. Yet they postpone it (intentionally or subconsciously) because the act of preparing one makes them uncomfortable.

"Having a succession plan in place can literally save a business," asserts Attorney David Markowitz, managing partner of Clayman, Markowitz, Pinney & Baram, LLC. "Without one, often the only option is to liquidate the business when the principal retires or dies. In that event, it's unlikely that the business will be valued at what it should be."

According to Markowitz, it is often easier for a larger business to address succession issues because, by virtue of its size, a sound management system is most likely in place. The same is true for law firm. The preparation of a succession plan frequently gives firm owners the focus they may otherwise lack. "It makes them think about where they're trying to go and how to get there. The resulting plan may not only make the business more successful, it will ensure its continued existence," says Markowitz.

Markowitz outlines five main steps necessary to formulate a succession plan:

- Develop a strong management team. Markowitz says that key managers need to know all about the firm's services and the importance of client relationships. Promising associates or junior partners need to understand the meaning of ownership and the responsibilities that go along with that.
- Make sound capital investments. "Invest in high-quality equipment, machinery and personnel rather than draining the firm of its financial assets every year," advises Markowitz.
- Understand the firm's competitive advantages and disadvantages (strong client retention rates, slow new-client intake).
- Work with an accountant or valuation analyst to help determine the firm's value.
- Determine how to implement the succession plan. "Shares or interest in the business can be given as 'gifts' or sold over a period of time and life insurance can be used to provide liquidity in the event of death," says Markowitz. Tax issues must also be considered.

The length of time it takes to implement a succession plan depends on the complexity of the business and whether any conflicts exist. "In a family [firm], the principal may be unwilling to relinquish control," Markowitz points out. "When this happens, I try to explain that if the individual wants a successful exit strategy and a comfortable retirement, certain issues must be addressed — and the sooner, the better."

In the case of larger firms with two, three or more principal owners, the succession plan can be as simple as a buy/sell agreement. "The problem for larger [organizations], in the absence of a plan, is the remaining principals must deal with an estate and heirs when one of them dies," explains Markowitz.

"When succession planning works, the principals liquidate their interests over a period of time (or sometimes in a lump sum), and the business continues and thrives," says Markowitz. "Failure to plan can result in business failure or forced liquidation."

The optimal time to create a succession plan varies with the type of business. "If more than one owner is involved, the plan should be drafted when the [firm] is created," advises Markowitz. "As the business grows, the agreement should be reviewed and modified as appropriate. In the case of one owner, it's best to wait until the business is established."

Owners of both large and small firms should work on their succession plan with outside counsel who specializes in business and corporate law. "Attorneys who focus in these areas understand how businesses work, how they survive and the measures that can be taken to help ensure that," says Markowitz. ✤

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