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*ESTATE*PLANNING

Take care of your business and family the way you want to, with a…

A good plan

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Peace of mind is a hard thing to come by these days.

People's lives are so busy with their businesses or jobs, their family, friends and squeezing time in for vacation that getting their personal financial house in order often falls to the bottom of the pile.

One of the many sources of satisfaction in my profession is that I am able to provide the kind of peace of mind that clients need to enjoy all of the above.

Simply put, they know that their businesses and family members are protected should something happen to them.

I admire entrepreneurs and their drive, their ideas and their tenacity. But I am not so sure they understand that the lives of those around them will be turned upside down if said entrepreneurs should become the victims of major accidents or health problems – or even death.

Yes, when it comes to their business, they know where they are now, and they can probably tell you what they want to do in the near and the distant future.

And yet I have discovered over the years of meeting with successful and busy people that only about 40 per cent of them have wills – and of those who do, 80 per cent of the wills are not up to date.

Many have not used a specialist to have their complex will written out by a knowledgeable expert. And rarely have they taken into account issues like probate fees and creditor protection.

They may have many people they admire both personally and professionally, yet they have not been organized enough to get two powers of attorney in place: one to look after their health, and the other their finances.

I explain to most clients that they are a hub of a wheel. What they do affects a great number of people around them.

Then I usually give them pause by asking: if something happens to you, who will open the doors to your business tomorrow?

The wheel, I tell them, has spokes that represent significant relationships you have both in and outside of your business.

The first one is your spouse. What kinds of problems will they run into? How will he or she get an income when you are no longer there to provide it? Will suppliers and customers have trouble with the fact that you are no longer there? What about key staff?

Avoid double taxation

I had a 70-year-old client not too long ago whose 69-year-old wife was a Canadian permanent resident but still a U.S. citizen. In the event that her husband died before she did, the wife would have been exposed to double taxation on any inheritance. That would have had a huge impact on the value of the estate.

In the end, among other things, we decided to buy some inexpensive joint-last-to-insurance and hold it in a trust that would cover off any

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U.S. tax liability.

We also set up a spousal trust which allowed the husband to maintain some control over the assets and keep them out of the hands of the U.S. government.

We put it together so that the spousal trust was for her; If she were to die first, her husband would only have to write a new will to distribute his assets to his several children.

The next "spoke" in the wheel is your children, some of whom may or may not be in the business. How do you equalize your estate for all your children? In the case of the couple above we brought in effective tax planning for each of the children, including wills, powers of attorney, life insurance and trusts.

But we also sat down with each of the adult children, putting individual life insurance on each family breadwinner, as well as some joint-last-to-die insurance for future estate planning.

Because some of the children opted to join in their father's business, we arranged for life insurance for the dad to ensure each child would get a lump sum on his death. That would satisfy the siblings, but still keep the company assets intact to provide ongoing income in the future.

Don't forget about your business partner. If your spouse inherits your shares of the business, will your partner appreciate having your wife (and her lawyer) as a partner going forward? Do the two get along well enough to keep the business going as it had been?

What you need then is a good business plan that includes a shareholder agreement. Both sides require expert legal advice when crafting this plan, but when done correctly it will avoid many potential conflicts among shareholders.

A good plan will include buy-sell provisions that clearly outline how shares will be transferred on retirement, disability, death, bankruptcy or marriage breakdown.

And what about staff? They have been loyal to you for years. How will you look after them? What do you have in place to prevent them from moving to a rival company? Perhaps your shareholder's agreement with a partner will stipulate that if the business is sold, employees will be kept on.

On top of that, you can ensure that if there is a buy-out, your key people will be able to receive some financial consideration.

There are many possibilities available to ensure your estate is structured the way you want it

The last spoke is your silent partner, the Canada Revenue Agency (CRA). Unless you have a spouse, the CRA will want up to 25 per cent of the growth in your business.

So let's say you started your business with $1,000 and it's now worth $5 million: CRA may take as much as $1.25 million in Ontario as its share when you pass away.

There is an $800,000 small business capital gains exemption, but that has to be set up properly in order to work. You can also multiply that capital gains exemption with family members by setting up a family trust.

So as you can see, there are many possibilities available to ensure your estate (including your business) is structured the way you want it through products and services offered with insurance and good tax planning.

It's not easy to contemplate what will happen in the event, heaven forbid, of a serious illness or your death. But there are many people who rely on you now and into the future.

Unlike contributing to your RRSPs or paying your taxes, there is no set deadline to get this work done.

That makes it all the more important to give yourself an imposed deadline to at least get the ball rolling.

It's a process, not an event, so make sure you have somebody helping you to quarterback the process.

The sun is shining now and that's the best time to get this done. Otherwise there may be very few options down the road. ❐