



Business Owners Planning Guide

Your Name

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Business Owners Planning Guide

Congratulations on taking this important step in your estate planning!

Getting organized is usually the most difficult step.

What if something unexpected happens to you?

How would that affect your business?

This important document will help you develop a contingency plan to ensure continuity (and value) in your business.

When completed, share it with your family and professional advisors to help you develop and implement a succession plan for your business.

Call us any time if you need our help.

Take care,
Mark Halpern, CFP, TEP

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BUSINESS SUCCESSION CHECKLIST

Potential Successors

- ☐ Partner / Shareholder
- ☐ Family Member
- ☐ Employee
- ☐ Competitor
- ☐ Outsider

Family Priorities

- ☐ Harmony
- ☐ Equality
- ☐ Fairness

Personal Priorities

- ☐ Comfortable retirement income
- ☐ Minimize taxes
- ☐ Maximize philanthropy
- ☐ Preserve wealth for children / grandchildren
- ☐ Spend everything
- ☐ Ensure business survival
- ☐ Never retire
- ☐ Always to be needed

Business Topics

- ☐ Canadian Controlled Private Corporation (CCPC)?
- ☐ Quebec Small Business Corporation (QSBC)?
- ☐ Small Business Gains Exemption (SBGE) used? ☐ Available?
- ☐ SBGE multiplication a possibility
- ☐ Holding company appropriate?
- ☐ Debt insured?
- ☐ Shareholder agreement in force? ☐ Current? ☐ Funded?
- ☐ Retention of key employees
- ☐ Employee incentive plans
- ☐ Voting control
 - ☐ Who?
 - ☐ When to change?

Retirement

- ☐ When?
- ☐ Full or partial retirement?
- ☐ Who takes over?
- ☐ Need capital or income?
- ☐ Safe to leave capital in business?
- ☐ Insurance funding?

Death or Disability

- ☐ Who takes over? ☐ When?
- ☐ For how much?
- ☐ Tax liability
- ☐ Insurance funding

Shareholder Agreement

- ☐ Signed?
- ☐ Valuation procedure
- ☐ Grandfathered for stop-loss rules?
- ☐ Permit share transfer to holding company?
- ☐ Cross-purchase or corporate share repurchase?
- ☐ Use of Capital Dividend Account
- ☐ Life insurance funding
- ☐ Regular review?
- ☐ Amount and type?
- ☐ Handling of shortfall?
- ☐ Exposure to creditors
- ☐ Maintaining insurance after retirement
- ☐ Revise to reflect estate freeze?
- ☐ Make sure correct parties included
- ☐ Include all classes of shares

Tax Issues

- ☐ U.S. citizenship?
- ☐ Income tax
- ☐ Estate tax
- ☐ Gift tax
- ☐ Canadian citizens
- ☐ U.S. Estate tax on U.S. property
- ☐ Beware “dual” citizenship problems

Stakeholders to Consult

- ☐ Employees
- ☐ Family members
- ☐ Suppliers
- ☐ Customers
- ☐ Lenders
- ☐ Advisors
- ☐ Shareholders

BUSINESS CONTINGENCY PLAN

A contingency plan, sometimes referred to as a Continuity Plan, ensures that everyone knows what to do if something unexpected happens to you. It outlines to your executor and/or legal representatives what they should do with your business, how they should communicate with your customers/clients and who they should contact for assistance.

Ideally, your Contingency plan should include an agreement with a third party who will step in on short notice and purchase your business in the event of death or provide advisory services in the event of a disability. These agreements should provide a detailed account of what was negotiated and agreed to with the third party to ensure the agreement can be implemented in a timely manner.

Negotiating a legally binding agreement to support your Contingency Plan provides the greatest degree of comfort but also presents the biggest challenge, which is to find a company or individual who will commit to purchasing your business at some unknown future date no matter the circumstances. If you are successful in identifying someone, the next hurdle to overcome will be to successfully negotiate and draft an agreement. These agreements are very similar to an actual sales agreement and require the same amount of due diligence and consideration. As always, consulting with a legal advisor is strongly recommended.

An alternative to negotiating a binding agreement is to negotiate a non-binding agreement that is more a letter of direction than an actual legal agreement. It doesn't provide the same level of comfort but it still allows you to negotiate and outline the terms of your discussion with a third party and provide some direction to your executors and/or legal representatives. Since less due diligence is required and finding an interested third party is easier, these agreements are often used to support Contingency Plans. The obvious disadvantage of this type of agreement is that neither party is legally obligated to act.

If for whatever reason you can't negotiate an agreement with a third party it is still imperative that you draft a Contingency Plan to provide your executors and/or legal representatives with instructions on how to proceed especially in the event of death. If possible, you should consider asking an industry colleague to be available to answer any questions and/or provide some guidance. This type of support can be extremely valuable in helping your executors deal with the business.

As a business owner it is your responsibility to ensure a Contingency Plan is in place to protect all the key stakeholders and the equity in your business.

This document is intended to help you with the process.

DRAFTING A CONTINGENCY PLAN

Drafting a Contingency plan is somewhat like writing a will for your business and it's a task that should not be handled alone. Your decisions affect everyone who is associated with your business. It is important to take the time and discuss your plans with your family, staff and professional advisors.

Here is a checklist of the various steps you should address when drafting a Contingency Plan for your business.

- Research and analyze the contingency options available to you
- Discuss your options with heirs, family members and possible business associates
- Determine what the requirements or policies are with each of your suppliers and confirm that they will support your plan
- Research and establish a valuation formula(s) to determine the Fair Market Value of your business
- Review your plan with your professional advisors to understand any possible legal or taxation issues
- Determine how the plan will be carried out and who needs to be involved in the process
- Negotiate and draft any legal agreements required to support your plan (e.g. buy & sell agreement, consulting agreement etc.)
- Develop a communication plan to minimize client migration if your contingency plan needs to be implemented
- Review your personal life insurance and disability plans (including business overhead)
- Ensure that your contingency plan aligns with your will and all other legal documents (e.g. any separation agreements, divorce judgments, etc.)
- Communicate your plan to all the key stakeholders in your business.
- Review and update your plan on a regular basis

CONTINGENCY PLAN TEMPLATE

Contingency Plan of John Q. Business Owner

Dear Executor,

Personal Comments

- 1 Overall objective
- 2 Philosophy
- 3 Words of wisdom

Who should be contacted?

- 1 Lawyer
- 2 Accountant
- 3 Consultant/Coach
- 4 Key Clients
- 5 Key Suppliers

Where to find records and files

- 1 Financial records
- 2 Client records
- 3 Leases
- 4 Copies of agreements

Notifying clients/customers

- 1 When to notify them?
- 2 What to say or send out to them?
- 3 How to prepare a mail out?
- 4 Who can assist them with this task?

How to proceed with the disposition of the business

- 1 How should they proceed?
- 2 Who will service the clients until your plan is implemented.
- 3 What agreements have been negotiated?
- 4 What are they supposed to do with the business?
- 5 How do they determine the value of the business?
- 6 What type of buyer is best suited for the business?
- 7 Possible buyers?
- 8 What happens to the staff?

Final Words

- 1 Closing remarks
- 2 Thank you

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