

The Golden Key To Spousal Business Succession

BY DICK YEMM, CFP

A state of temporary confusion typically engulfs a loved one when notified that their husband or wife has just been in a serious accident or passed away. The atmosphere is often charged with high emotion. Suddenly the world is turned upside down for the surviving spouse. Soon life-altering decisions will have to be made, especially when a family business is involved.

Consider the story of Amanda whose husband Tory was seriously injured while riding his motorcycle. Even though she had worked in their business, she was totally unprepared to replace Tory as principal operator. It was apparent that the business would soon unravel with no one in control. The family's financial future depended upon her working in his place. Somehow she, together with the employees, had to keep the business operating. Her management style could be described as crisis control through trial and error, learning from daily mistakes. There was no planning to assist her in running the business, only the legal temporary transfer of authority provided by the power of attorney.

Amanda quickly found that Tory's will and life insurance were of little help. Each would apply only in the event of his death. Instead Tory's durable power of attorney appointed Amanda as his personal representative, to conduct business under specific conditions that included his being incapacitated.

Facing Uncertainty

A major fear of many is "What happens to them and their families if their husband or wife, who is the principal operator of a



company, becomes unable to operate a small company owned by the family?” The answer depends on many things, such as what planning and preparation has been accomplished before a triggering event occurs. If there has been no planning, then the fate of the business falls to state statutes, which direct the appointment of the disabled owner’s personal representative. The ability to control management of the company can transfer with this appointment. There is no guarantee that a family member

in this position as a means of convenience; it was never the expectation that they would have to operate the family business. It’s likely that little thought had been given to their qualifications or ability to handle the burden suddenly placed on them.

Every spouse needs to have some type of organized action plan just in case they have to assume control. A prepared spouse is aware of their responsibilities and options for running a business before a triggering event occurs.

affected owner recovers from the triggering event? If so, how long should the company be operated with temporary leadership before a decision is made to implement a permanent succession plan? And, will a permanent succession plan mean different ownership and/or management?

In some cases the successor spouse may qualify to represent the owner interest but may not have the necessary license and education to operate the company. If needed, a competent manager

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will be appointed to this position. A family’s future interest in the business remains in peril depending on the appointee’s success.

An adequately prepared spouse can be the golden key to a business’s survival. Their designation as personal representative in either a durable power of attorney or a will gives them authority to represent an owner’s interest in a company. If the owner controlled the fate of their business, then their spouse can automatically succeed to that position unless limitations were specified in estate planning documents. Thus the ultimate fate of the company depends on the successor spouse. In many instances however, the successor spouse has been placed

Their options include:

- Continue to personally operate the business;
- Operate the business as an overseer, not involved in daily operations;
- Elevate a designated employee to be chief operating officer;
- Hire a temporary experienced manager;
- Sell all or part of the business as soon as possible;
- Exercise an operating, purchase, or buy-sell agreement.

Selection of the appropriate choice depends on many factors. Chief among the considerations is the length of time anticipated for the successor spouse’s involvement. Will participation be short-term, only lasting until the

possessing the required qualifications can be hired.

An Action Plan

The potential successor needs to develop their action plan based on his or her management ability, availability, motivation, and operating knowledge of the company. Also to be considered are the company’s:

- Type of legal entity;
- Size;
- Number of employees (their knowledge and experience);
- Diversification of management;
- Diversification of product or services.

All businesses are not created equally. Entitlements and protections vary under state statutes ac-

DICK YEMM

Yemm is an author, speaker and consultant on succession planning. His book, *The Stories*, was developed as part of the series *Tomorrow – Your Business Without You*. They are used in his seminars on contingency/succession planning for business owners and their families. He is a professionally licensed Certified Financial Planner and holds multiple levels of security licenses. For more information contact: (772) 562-1281; e-mail: rileyspress@atlantic.net; or visit www.yourbusinesswithoutyou.com.

ording to how a business was legally structured when it started operation. For instance, ownership interest of a company started and continually operated as a sole proprietorship ends when the owner can no longer participate in its activity. Companies created and operated as a corporation, partnership or as a limited liability type of either, allow owner interests to transfer.

The development of a successor spouse's action plan starts by educating oneself through dinner table discussions and reading trade magazines. The education should be broad in scope so the different options are understood. Detailed operating knowledge of the company is not required, businesses change daily in response to demands. Instead you need to prepare yourself to make crisis decisions.

Consider what might be your first steps when implementing your action plan. Different triggering events require different responses. Before any options are exercised, the first step of any action plan should be to gather all available information about the company. Confidential disclosures, useful short cuts, administrative

information, operating mechanics, guidelines and overviews detailed in an operating plan prepared by the operating spouse, would all be valuable aids in decision-making. The use of a suggested and trusted advisor could be of tremendous importance for support and guidance. From whom and how a spouse obtains assistance should be part of an operating plan document.

A prepared spouse, with an action plan, can hold the golden key that makes the difference for a business's continued operation – and for a family avoiding unnecessary financial crisis when unfortunate events strike. ■

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16A Journey, Suite 200
Aliso Viejo, CA 92656-3317
toll-free 877-626-2776
local calls 949-859-4040
fax 949-855-2973

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