

Mistakes to Avoid in 2020:

Common Estate Planning Mistakes of Business Owners



By: Sarah J. Schmidt, Esq.

If you had a stroke or experienced some other disabling event tomorrow, who would manage and operate your business? Who would make medical decisions for you? Who would take care of your personal finances? Who would manage the finances of your business?

Planning for death or disability is vital for *everyone*—most especially business owners—to ensure they have a plan in place if something were to happen. Like visiting the dentist regularly for a cleaning prevents an expensive and painful root canal later, a simple estate plan (and making regular updates) can help avoid an expensive, painful, and disastrous event for both your family and business.

1. Mistake Number One -- You don't have a plan.

Not having an estate or succession plan—or thinking you do not need a plan—is the number one mistake business owners can make. Business owners spend many years focused on building, scaling, and taking care of their employees.

Yet, it is often not until nearing retirement that owners start to consider the prospect of a business succession or take time to think through how death or incapacity would impact their business. However, delay and failure to have a plan in place creates far more issues than putting a simple plan into place now. Below are just a few reasons you should create a plan and cross estate planning of your 2020 to-do checklist.

The Problem: Delayed access to control.

One of the primary benefits of an estate plan and business succession plan is allowing for the seamless transition of control of your business in the event of death, disability, or other exit from your business.

It is important to ensure that your business continues operating, pays employees, and fulfills contractual obligations during your period of unanticipated absence (whether because of a death or disability). This is especially true for sole proprietors or companies with a single shareholder.

PRESENTATIONS & WORKSHOPS

Attorneys at ReavesColey offer workshops and presentations on Estate Planning, Probate, Fiduciary Training and Business Succession Planning.

These workshops and presentations help clients and potential clients learn more about Wills, Trusts, Powers of Attorney, probate, and offer business succession planning.

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to check the schedule for an upcoming presentation near you.

When a single individual has control over the company through 100% ownership of its voting stock, without a proper estate plan, upon your death your heirs or successors will only be able to take control of your business through the Court's probate process, which is time consuming, expensive—and completely avoidable. Moreover, if you become disabled without a proper estate plan, the operation and control of your business will be left to the decision of a judge through a guardianship and conservatorship proceeding.

The Problem: Disputes over control.

If you pass away without an estate plan, the Commonwealth of Virginia has created a plan for you. Control will be left to those persons as outlined in the Virginia Code.

For example, in the event of a mental disability, if you do not have a plan in place, only a court can grant someone the ability to take over control of the finances with which you were previously responsible (this includes personal finances – even if you are married) and this may even include the finances of your business if you are the sole owner.

Without proper documents in place, your business and your estate will pass to and be controlled by those persons and in such amounts as provided in the Virginia Code or as granted by a Court.

Understandably, this presents a great number of problems when you have the potential for disagreement among family members. If you have a wife and children from a prior marriage, or children who do not always agree, the control over your business will likely become a hotly contested issue and may end up in litigation for months, or even years, at great expense. All of this can be easily and inexpensively avoided through proper planning.

Additionally, using the court system as a method for transitioning control (though probate or a conservator) is not just expensive, it is also time consuming and (unfortunately) creates a situation where family disputes are addressed in a *very* public way.

Planning for a period of disability with a licensed Virginia attorney can be simple, short, and inexpensive compared to what might result if you do not have a plan in place.

2. Mistake Number Two -- You have a plan but it is old, lost, or informally amended.

An outdated estate plan or business succession plan (that no longer reflects your wishes), can present some of the same problems as having no estate plan at all. Nevertheless, whatever you do, if you have an estate plan that needs to be revised, do ***not*** hand-write on your documents in an attempt to amend them. Depending on the document, and what you have written, these changes may affect the validity of your estate plan and could end up costing more for your successors to prove in Court what you meant by your handwriting than it would have cost to simply update your estate plan with an attorney.

3. Mistake Number 3 -- Your business is or has converted to an S-Corp since you updated your documents.

If you own a business which holds stock or interest in an S-Corporation, it is very important to update your estate plan to reflect this

change. The IRS imposes a great number of restrictions as to who is permitted own or hold S-Corp stock, and the transition of your stock during a period of death or disability might violate these rules if your plan is not properly drafted.

4. Mistake Number 4 -- Your estate plan does not account for federal and state regulations.

Every business owner needs an estate and succession plan, but business owners who participate in federal and state small business and socio-economic certification programs need to be especially careful that their estate plan does not violate applicable Small Business Administration (SBA) and Small, Woman, and Minority Owned (SWaM) regulations. Some common estate planning strategies may unwittingly violate these rules and unfortunately, not all estate planning attorneys and professionals specialize in representing business owners who participate in these programs.



*“If you have an estate plan that needs to be revised, do ***not*** hand-write on your documents in an attempt to amend them.”*

Please contact us today and set up an appointment to review your current estate and business succession plan in order to ensure you avoid these mistakes in the New Year.

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***Sarah was recognized as one of the Top
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Coastal Virginia Magazine, January 2020***

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