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Is your legal house in order?

When all progresses as expected, the transition of your business to the next generation can be a smooth process with minimal anxiety. Unfortunately, many family-owned businesses operate under the assumption that ownership and control will pass to a spouse or the next generation based on internal family discussion and understanding. As a consequence, many organizations fail to take the necessary legal steps for the proper transfer of the business interest upon the unexpected event.



Recently, a small family-owned business was confronted with the inability to pay bills after the sudden and unexpected death of the owner when their bank refused to honor checks endorsed by his son, the designated (but unofficial) heir apparent. As he attempted to take control of business operations, he also ran into problems dealing with customers, vendors and suppliers.

There was no documented evidence expressing the owner's desire regarding succession. All the family could offer was their independent recollection of what they thought Dad wanted. Most expected the owner's son to take over the business and they were working through that transition. However, the owner remained the sole shareholder, the only officer of the company, and the only person with any signature rights on each of their bank accounts. The corporate documents had been prepared over 20 years prior and had not been updated or amended. Further, they never prepared a Buy/Sell Agreement that would detail the process for the transfer of ownership. With four children as equal beneficiaries of the deceased owner's estate, navigating through the successor ownership and, more importantly, the immediate control and continuing operation of the company, became a very expensive and emotional example of what can happen when a business owner fails to create the legal mechanism to accomplish his/her intended succession plan.

The sudden death or disability of any business owner is always difficult. Comprehensive business succession planning should always include identifying and preparing the successor and the drafting of the appropriate legal documents. It is only when both are fully considered and completed, that the business will be properly prepared for the unexpected; and dramatically reduce the impact to business operations, as well as family relations, when surprise events occur.

Jeff Albrinck's corporate/business law practice is focused on business formation/dissolution, business succession planning, acquisition or sale of businesses, franchise law, employment law and other contractual matters.