

## ESTATE PLANNING

# Early start smoothes succession process

**B**usiness owners used to making difficult decisions about running their companies often become confused and frustrated by succession planning.

One reason is that business succession decisions are subjective and can't always be measured by numbers. Another is that good succession planning forces owners to consider their values and how they will spend their time and money for the rest of their lives.

Here are some questions and answers to help owners of private companies considering involving employees in their succession planning:

**Q How can I make wise decisions about ownership succession if I am not ready to give up control of my company yet?**

**A** Business owners rarely are ready to give up complete control of their companies, and as a result they procrastinate until it's too late. The real solution is to start early with a process of ownership succession that initially requires giving up only a small amount of ownership and no control.

This approach sends the message to key stakeholders that you mean business and will follow through with your succession plan. A partial sale to an employee stock ownership plan, or ESOP, allows an owner/seller to convert some stock to cash while retaining 100% control of the business and the right to remain working in the company if they choose.

**Q How can I maintain family harmony through business succession if I already have conflicting goals within my family?**

**A** If there is family conflict while you are alive, imagine the problems that might develop if you weren't around to mediate. With divorce rates in excess of 50%, it's no surprise that most families in business struggle with conflict. In all, 65% of planning failures are the result of lack of trust and communication. Trust and communication are improved through family wealth counseling and coaching through a values-based approach to business succession.

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main in control for as long as they want. The key is flexibility. An owner who does a partial sale to an ESOP has many options including:

- Keeping ownership at the same percentage
- Increasing ESOP ownership through a future sale
- Reducing the ESOP through stock redemptions as employees leave
- Bringing family members into the business and give them ownership and/or control
- Selling the entire company including the ESOP to a third party.

**Q Is it true that ESOPs are expensive and very complicated?**

**A** ESOPs are no more complex or

**Q What are the tax and financial advantages to an owner who sells to an ESOP?**

**A** The owner of a regular or C corporation may sell to an ESOP and elect to defer capital gains taxation permanently on 100% of the sales proceeds provided a few simple rules are followed. In addition to capital gains relief, the owner can take a business tax deduction for 100% of the cost of financing their own buy-out.

For the owner of a sub-chapter S corporation the tax advantages are slightly different. Instead of capital gains relief, the owner benefits from an unusual tax provision that allows the stock sold to the ESOP to become permanently tax exempt. If 50% of the company is sold, the tax bill would be cut in half permanently.

**Q If there were no tax advantages to an ESOP, would it still make sense to do one?**

**A** ESOPs allow an owner to sell all or part of their company and yet re-

expensive when compared to other approaches to business succession. 401(k) plans governed by complex ERISA rules are well received by owners and employees alike. ESOPs are easy to understand with the help of professional advisers who specialize in ESOPs.

The complexity and cost of finding the right outside buyer can be very frustrating for an owner. While an ESOP transaction might cost between 3%-5% of the total amount sold while a third-party sale easily can run 20%-25% when you factor in all transaction fees and taxes.

The bottom line is that while ESOPs are complex, they eliminate many of the obstacles that keep owners from making wise business succession decisions. With proper guidance, ownership transition can be completed successfully and in a timely manner through ESOPs. ■

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