



## Legal Alert

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**QUESTION: HOW DO I KEEP THE GOOSE ALIVE WHILE PEOPLE FIGHT OVER THE GOLDEN EGGS?**

**ANSWER: SYSTEMIC BUSINESS SUCCESSION PLANNING CAN KEEP YOUR BUSINESS INTACT THROUGH THE UNCERTAINTIES AND CERTAINTIES OF BUSINESS CYCLES AND LIVES.**

People die, get divorced, become disabled, or simply get mad at each other. Businesses and markets expand and contract. Capital and financing dry up. Business cycles come and go, businesses thrive and fail. How do you keep the enterprise on a solid footing through all of the vagaries of business and life?

Let's start with the basics!

### ***What is the business and who owns it?***

What kind of entity is the business? What kind of entity do the business owners believe the business to be? What do the legal documents actually reveal to be the business structure, if anything?

Who owns the business? Are there records as to who put money into the business and how much? Did anyone contribute "sweat-equity" and are there any records memorializing the value of such efforts? Do the owners all agree on the respective ownership percentages? What, if anything, do the business documents reflect about the respective ownership interests and values?

Who owns the name of the business? Are there trademark protections and trademark applications? Have all of the proper applications and filings been made to protect trade names, trademarks and other basic intellectual property? Are all of the filings to protect the basic intellectual property of the business current? Who owns the email address and who owns the website and its content?

### ***Can anyone find the business records when needed?***

Who keeps the business records? What checks and balances are in place with regard to business records and accounts? **Who is the accountant?** Are there procedures for audits? Does the business have any deadlines in place for reviewing and updating business documentation?

Where does the business bank? Are there multiple banking accounts with multiple financial institutions? Are there banking resolutions and are they current? Is the business in compliance with all requirements of the financial institutions with which it does business? **Who can sign on bank accounts and are they still with the business?**

Where is the business physically located? Are the premises owned or rented or both? Does anyone have all of the current copies of leases and deeds? Are all property taxes current? Is there a list of all of the phone numbers? Who owns the phone numbers? (Do some of them actually belong to people who are no longer with the business?)

What insurance coverage is in place? Is there liability insurance? Is there property and casualty insurance? Do these insurance policies actually cover the most likely risks of the business? Are the policy limits reasonable to protect the business from anticipated risks?

Is there medical insurance for the owners and staff? Does the medical insurance comply with all current federal and state laws and regulations? Have you checked on that lately?

Is there key person life insurance and disability insurance to provide funds to help the business survive deaths and disabilities of key managers?

#### ***What does the business do?***

What are the current goods and services offered by the business? What are the markets for the goods and services offered by the business? What are the geographic markets? Who are the customers? What changes in business offerings or markets are anticipated?

#### ***Are there written compensation packages for owners, officers, directors and key management personnel?***

Are there existing mechanisms for distributing dividends, returning capital or paying profits? Are there guidelines for salaries or draws? Are there written policies for reimbursement of expenses? Are there written procedures for any and all bonuses?

Are there indemnification provisions for officers, directors or owners? Is there adequate directors and officers insurance coverage?

#### ***What happens if an owner wants to sell to an outsider?***

What happens if an owner dies? What happens if an owner wishes to retire? Can owners be forced out of the business? How do owners plan to cash out their equity in the business?

Are there buy-sell agreements or operating agreements that govern transfers of business interests? Are they adequate and current? Are they properly funded through reserves and life and disability insurance?

What are the valuation procedures in the event of any transfers of interests in the business? Are there any valuation procedures for ownership interests? Are the

valuation procedures current and do they match the actual current value of the business? Do the procedures still make sense?

***Are there proper business policies in place?***

Are there policies governing conflicts of interests? Are there policies on non-competition and not usurping business opportunities? Are all policies in place to comply with all federal, state and local laws and regulations?

***Has anyone actually thought about how the business will continue and remain intact in light of the uncertainties and certainties of business cycles and life?***

If you need help with these challenges, please call me.

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