

FOCUS ON BUSINESS SUCCESSION PLANNING

Death of owner puts businesses without a plan in danger

By **JENNIFER TROXELL WOODWARD**
Special for Lehigh Valley Business

Attorney Dolores A. Laputka of Norris, McLaughlin & Marcus PA in Allentown recently had a client contact her about the untimely passing of a 70-year-old area business owner who did not have a succession plan for his company.

“The wife had to be appointed administrator of his estate because there was no will,” Laputka said. “The wife then becomes the officer of her husband’s company.”

This scenario of a business in crisis occurs more often than many people realize, according to some lawyers and accountants. A business owner dies unexpectedly and does not have a business succession plan in place for his or her company. Whether it is a corporation, a limited liability company or a small family-run business, this situation gets sticky. Lawyers, financial advisers, insurance companies and top executives have to get involved to resolve the inevitable mess that is left behind.

According to several eastern Pennsylvania lawyers and accountants, a business that lacks a succession plan can expect to spend quite a bit of money to make sure the business stays afloat after its owner dies.

The courts have to get involved, a paper trial begins and the will has to be probated –

and if there is no will, an administrator needs to be named. It is a time-consuming and unavoidable process.

In the case of a publicly-held corporation, there are other shareholders, vice presidents and top-ranking officials who can take the reins. But when it is a business with a sole proprietor, no successor and no heirs, the company’s fate is truly uncertain.



‘We encourage clients to review their estate plan every five years.’

— **Buddy Lesavoy, attorney**

“It really depends on the structure of the organization,” Laputka said. “In the case with this wife whose husband passed away, she has to figure out how to manage the business in his absence.

“Does she try to keep it running? Does she sell it as quickly as she can?”

Laputka, also a Certified Public Accountant, added that a business with no one to run it can be sold in a short time frame in what industry officials call a fire sale.

This is not always the preferred way to go

since it means that, generally, the company does not get sold at top dollar.

“There are things that have to be done to keep the lights on. A business owner, who doesn’t have a will, should at least have key-person insurance, which basically means that the key person of any company needs to be insured,” the Laputka said. “You need at least one other person who can sign things, handle

Lesavoy cited at least one example where a prominent area business owner met an untimely demise and left behind a wife, seven children and 100-plus employees.

“There was no succession plan. So our firm became fully engaged, and we quickly identified a new chief executive officer and stabilized the situation,” Lesavoy said. “Eventually, the business had a new owner, and this man’s family saw an economic benefit from it,” he said. “It is extraordinarily challenging. The court system has to come in play to dissolve the business and maximize potential.”

GO-TO EMPLOYEE

In Reading, Joe Witkowski and Steve Wolf, partners at the accounting firm Herbein + Co. Inc., said many times a business owner feels he will never retire or thinks there is no one better to take his place.

Therefore, the owner does not create a succession plan because he feels “nothing will happen to me,” Witkowski said.

Witkowski said a company needs to have representatives in place, such as an investment adviser, advisory team or consultant.

The company should have “a quarterback, someone to sign things, handle things when

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you are no longer able to run your company," he said.

BUSINESS AGREEMENT

Wolf and Witkowski said a spouse or heir will first go to the company's accountant for direction, as with a recent case when a man died and his wife called his accountant for guidance.

The outcome was that the spouse quit her job as a teacher to keep her husband's business going.

Wolf said that if there is no succession plan to go by, then "there should at least be a business agreement written that says what should happen with the ownership."

PLANNING WELL IN ADVANCE

A business owner of a muffler shop in Stroudsburg, who asks that he and his business remain unidentified, said that he had to jump through quite a few hoops to claim ownership of the shop after the former business owner died in an accident and with no business succession plan in place.

"It takes a lot of money and expense," the shop owner said.

Lesavoy said that planning should be done in advance, or years of litigation and great expense may be needed to fix the situation.

"This is a great reason to plan properly and regularly," he said. "We encourage clients to review their estate plan every five years."

ANY WHICH WAY TO SAVE THE FAMILY BUSINESS

As a girl, Maryann Ignatz never dreamed that she would one day run her father's tavern.

But all that changed in 1977 when her father Steve, sole proprietor of Steve's Café in Phillipsburg, N.J., died suddenly of a cerebral hemorrhage. The business, started 100 years ago by Steve's grandfather, suddenly was rudderless.

"My dad planned to retire. It just never happened," said Ignatz, noting that there was nothing in the way of a succession plan for the tavern. "My dad's plan was that you would sell and get out of it. He would say to my mom and me, 'If something happens to me, you cannot stay here...' I think we would have surprised him."

Maryann, then a school teacher for the Easton Area School District, and her mother, Mary Ignatz, shut the tavern for two weeks following Steve's passing. Maryann visited an attorney, who told the Moravian College graduate that she was educated and could easily take over the business.

So Ignatz, in her 30s at the time, put the business in her name, becoming a fourth-generation business owner and giving up her teaching career.

"I was interviewed by the local police but was not fingerprinted," she said of the process that essentially involved filling out a form and having it notarized. "Today, (taking over a business) is so much more complicated. Dad's



PHOTO/BRIAN PEDERSEN

Maryann Ignatz was thrust into operating a tavern in 1977, a business that is now a century old.

estate settled in a month, I think."

Mary Ignatz became the bookkeeper, and her daughter rolled up her sleeves and learned to tend bar, an environment very different from a school.

"I had to be taught how to pour a shot. My uncle had to teach me how to clean coils for the beer," Maryann said. "I would not change my decision. I gained a lot of life knowledge."

Steve's Café, on Main Street, takes pride

in that the bar has a century-long history. Ignatz said she often holds events to honor firefighters, policemen and servicemen, as well as hosts historic programs such as railroad club events.

"The railroaders were our first customers when my great-grandfather opened the bar all those years ago," she said.

— Jennifer Troxell Woodward

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