

Procrastination on Estate Planning Can Land A Small Business in Probate Court

By Frank L. Brunetti on May 14th, 2012

Many business owners hope that the companies they have built will outlive them and help build a family legacy. Too often, however, business owners procrastinate when it comes: (i) to estate planning, (ii) to taking advantage of gift tax exemptions and (iii) to utilizing trusts – all strategies that can help keep a company out of probate court.

Businesses that fall into probate can be compromised significantly, as court proceedings can take anywhere from a few months to a year or more, according to Fox Business. Moreover, because probate court proceedings are public, every aspect of the company may be revealed, including the assets it holds and its financial standing. During this period, business operations are typically run by the executor of the owner's will, or in cases where an executor is not specified, by an individual who is court-appointed to manage the responsibility. This can not only negatively affect the company's bottom line and exclude family members from key decisions, but can also jeopardize relations with employees and customers.

One of the factors that may inhibit owners from estate planning is a lack of clarity on when they should begin. Because estate laws are subject to frequent changes, owners who begin making preparations the day they begin turning a profit will best protect themselves and their heirs, according to Fox Business.

Living trusts are one of the most common ways business owners can keep their business out of probate, since they allow the trustee to easily transfer assets in the trust to heirs and avoid disruptions in company operations. However, many business owners are getting more creative and seeking out different trust options that fit their particular business needs.

Proper estate planning can help ensure companies are passed down successfully. Data from the Family Business Institute finds that only about 30 percent of family businesses survive into a second generation.