(SOMEONE'S) GONNA PARTY LIKE IT'S 1999!

6 Business Succession Planning Lessons We Can Learn from Prince's Estate

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The recent death of Prince was a shock to music lovers the world over. He singlehandedly changed the music industry. Prince wrote, produced and performed numerous hits, including, perhaps the most well-known (and toe-tapping) visions of the nuclear apocalypse, "1999."

By all measures, the estate Prince left behind is very complex. His estate is comprised of an ongoing business enterprise, sophisticated intellectual property interests and an abundance of valuable collectibles, including works of art. By adding to the mix a potentially lengthy and expensive dispute over who has the right to inherit and control his empire into the future, it is very likely that Prince's estate will be tied up in the courts for the next decade or longer.

Despite his immense musical talent and business acumen, Prince's failure to execute an estate plan providing for the distribution of an estate estimated to exceed $300 million will likely be a permanent footnote to his musical and philanthropic legacy.

Ironically, by not having an estate plan, Prince left something to all of us - six valuable lessons that should motivate business owners and family leaders to avoid the mess that results from failing to plan.

1. ***You Don't Have to Be Rich ….***

While only time will tell what happens with Prince's empire, it is clear that he will have no input as to who receives what, when they receive it and under what terms or conditions the inherited property may be used. The courts will control what eventually happens to his estate.

Succession will occur for all businesses. Whether it happens because the owner retires, dies, or becomes disabled, there will eventually come a time when the ownership and management of the company have to be transitioned to the next generation of leaders.

One of the biggest misconceptions about succession planning is that only individuals with taxable estates need to put any planning into place. Nothing could be further from the truth. The typical business owner pours an immeasurable amount of blood, sweat, and tears into building a company, and succession planning is essential to preserving the value of those efforts for the owner's family. If the plan is to pass ownership of the company on to family members, the use of trusts, discounting mechanisms, and other estate-planning techniques can significantly reduce the amount of associated estate and income taxes and maximize the preservation of the owner's wealth. If, however, the plan is to sell to a third party, the succession planning process will help owners identify and address any financial or business issues at an early stage that could undermine the value of the company in the eyes of potential buyers or even be obstacles to completing the sale.

2. *I Get Delirious*

Although the events surrounding Prince's death are not yet fully known, the autopsy results revealed that he overdosed from the prescription painkiller Fentanyl. Following his death, many asked what might have occurred if someone had intervened on his behalf. Because Prince never signed any testamentary estate planning documents, it is likely that he never signed Powers of Attorney for Health Care or other documents designating a legal fiduciary to take actions on his behalf in the event of his incapacity.

One of the most overlooked, yet vital, components of a succession plan is the fiduciary. The fiduciary may be the Executor of a Will, Trustee of a Trust or agent under a Power of Attorney for Property or Health Care.

During a business owner's lifetime, a fiduciary can be authorized to make property or health related decisions for the business owner either on an immediate basis or only upon a physician's certification that the business owner does not have sufficient capacity to make his or her own decisions. It is common that a fiduciary's powers will terminate once the business owner regains sufficient capacity to manage his or her own affairs.

At death, the fiduciary is charged with fulfilling the owner's testamentary wishes, which may include overseeing the operation of the company and, or, preparing the company for sale.

If, like in Prince's case, no written authority exists for the appointment of a fiduciary, then it is up to the court to decide who should act in that capacity. As you might imagine, this could set the stage for the first of many legal battles if the beneficiaries have competing interests.

3. *When Doves Cry*

Prince's significant philanthropic activities came to light after his death. Prince made many large gifts during his lifetime to many charities, including his church and other civic and social causes important to him. In keeping with his private nature, his charitable giving was typically made on an anonymous basis.

Although we will never know what portion of his estate Prince would have wanted his favorite charities to receive, as a matter of law a charity does not have a legal right to participate in a decedent's estate unless the charity is specifically designated in the decedent's estate plan or the decedent executed a binding pledge agreement with the charity during lifetime. Because he had no estate plan, and thus made no provisions for charitable gifts, Prince's estate will bear the full brunt of the federal and state estate tax liability on that portion of his estate valued in excess of the currently available "applicable exclusion amount" of $5.45 million. Assuming the combined federal and state estate and inheritance tax rates are 50%, Prince's estate will be looking at an estate tax bill of nearly $150 million. That's enough to make doves skip the crying and seek immediate medical attention!

4. Let's Go Crazy, Let's Get Nuts

Prince appears to have been survived by a sister and five half-siblings, each of whom may be entitled to a share of Prince's estate. The estate has also been contacted by at least one person who, from the confines of his jail cell, insists he is Prince's son and seven other individuals who claim to have a right to a share of the estate as the children of Prince's predeceased half-sibling.

Unfortunately, legal confusion begets attorneys, and attorneys beget litigation. In light of the fact that many of Prince's family members have hired counsel, at this point the only thing that seems to be certain is that litigation will soon commence and it will be protracted and expensive.

It's easy to see how intrigue about "which child will be picked to run the company" or "who in the family will inherit what" can be such an enormous source of turmoil, and can actually cause delay in the owner coming to terms with planning decisions. To avoid the myriad of potential lawsuits and discontent now swirling around Prince's estate, it is vital for business owners to put their wishes down in writing. While spouses, children, and other family members may not always like the answers, it is important to make sure the family understands the plan. Proactively addressing these questions and communicating the plan goes a long way in minimizing hurt feelings and preventing painful—both emotionally and financially—infighting that can occur after the business owner is gone. The business owner's failure to put his or her testamentary wishes in writing makes the administration of the owner's estate a hundred times more complex and likely results in the exclusion of one or more individuals or charities the business owner intended to benefit. It also leads to the erosion, through protracted legal proceedings, of the very assets the owner intended to distribute to the owner's family, friends and favorite charities.

5. Party Like It's 1999!

Without any written guidance from Prince, it remains to be seen who will be considered "members of Prince's family" and which members of Prince's family will receive a portion of his estate. And once those questions are decided, the beneficiaries will be free to spend (or invest) their share of the estate in whatever manner they desire without any legal controls. In light of the dollars at stake, this may give new meaning to partying like it's 1999!

Business owners often express their concerns about creating a sense of entitlement in their children. Specifically, they are concerned that an inheritance might inhibit a child's work ethic or, worse yet, lead the child to develop destructive behaviors. In short, they fear their children "blowing" their inheritance and hurting themselves in the process.

A properly constructed succession plan will be designed to take optimal advantage of the current gift and estate tax laws and can be prepared to ensure that appropriate safeguards are put into place to protect the beneficiaries from the taxing authorities, their creditors and themselves. A properly constructed succession plan will also serve to achieve the owner's legacy, which may include benefitting future generations of the family and the company's current and future non-family employees.

6. Act Your Age Not Your Shoe Size

In succession planning, as in most things in life, it is never too early to start thinking about the future. From a strategic standpoint, more time means more options for deciding how to best structure the transition. From a financial standpoint, starting early provides more opportunity to leverage the currently available gift, estate and income tax benefits, by, among other things, transferring appreciating assets out of the owner's estate to family members.

Preparation is often the difference between success and failure in business. With a strong business succession plan in place, business owners can prepare their companies, their families, and their employees, for a successful future. If you have a succession plan in place and have not reviewed it within the last three years, we suggest that you do so. What was appropriate years ago may no longer make sense. For example, it may be the case that you had school age children when you last reviewed your succession plan, and were focused on who would serve as their guardians. Today, those children may be grown up and perhaps good candidates to be designated as successor fiduciaries in your estate and succession plan.

To be sure, Prince's death will be a loss to music lovers all over the world. That said, it is difficult to imagine the additional pain (and expense) imposed on those closest to him by his failure to execute an succession plan clearly identifying the individuals and charities he wished to benefit upon his death.

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