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Succession

Lack of 'business will' leaves big mess

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They may designate what will happen to their house, their car and their boat – but a surprisingly large number of business owners fail to make out wills specifying what will happen to their most important asset – their business – if they die.

Just one quarter of entrepreneurs have made out “business wills” that cover their company’s operations, estimates lawyer Lynne Butler, a senior will and estate planner with [Scotia Private Client Group](#), a part of Bank of Nova Scotia.

As a result, many leave family members and employees in the lurch.

“They think it’s something they’re supposed to do when they’re old and ready to retire, which, in my view, is too late,” Ms. Butler said.

She’s seen what happens when an owner has no business will. “Next thing you know, it’s being sold at a fire-sale price. There’s no one to take control, nobody knows anything, nobody can sign anything, or sell anything, and it becomes a big mess.”

Timothy Brown, president and chief executive officer of Mississauga, Ont.-based [ROI Corp.](#), Canada’s oldest dental business appraiser and brokerage, has seen the effects of such negligence.

Mr. Brown helps dentists who want to sell their established operations upon retirement. His 30 staff appraise and sell hundreds of practices every year across the country.

But he is often called upon by grieving families to unwind practices after the sudden death of the dentist-owner.

“In my distinct business, my phone rings in times of crisis. Generally once a week... unforeseen loss, it happens all the time,” he said.

The results, he said, are twofold. There is an immediate drop in the value of the business, and chaos occurs for family, staff and advisers.

“I believe it’s very selfish of a business owner to not prepare for their sudden departure from the business,” he said.

Mr. Brown developed his own “emergency plan” for unseen circumstances after buying his company from his father 15 years ago. Over time, it developed into a business will that outlines his wishes for his company.

“It effectively said, ‘In the event of my death, do these things...’ and a sequence of events, such as appointing an interim president and manager, leaving a set of instructions behind about who to call and what to do, what possible buyers there might be for the company.”

He updates the plan every year.

“My business has value, it has a life. It provides for a multitude of people and is a valuable service to our customers. I don’t want it to be shelved or dismantled because I am gone,” he said.

One of Ms. Butler’s clients, Sandra Butters, president of Ener-Tech Industries Alberta Ltd., decided last year to get her wishes for her Edmonton-based company down on paper should something unforeseen happen to her. She said she was thinking of her daughter when she realized her personal will was insufficient to cover the business .

“My daughter is 22 and in university. If something happens to me it would be too much to put upon her to try and figure out my [business] estate and continue on with her education,” said Ms. Butters, whose company designs and installs heating and ventilation equipment for the oil and gas industry.

“And it would be too much to put upon a friend or family member. I don’t really have anyone who could muddle through everything.”

Ms. Butters is nine months into the process, and it has been an eye opener.

“When I die, things aren’t just going to go away. Things need to keep running day-to-day; I have four staff to look after as well.”

On his own business will, Mr. Brown worked with Toronto-based small-business consultant and author Elizabeth Verway, owner of [Small Office Mentors](#). She started to focus on giving advice about business wills when she noticed this important element was missing from many of her clients’ plans.

“They would be doing operations manuals to allow the team to support each other, and I would ask the business owner what would happen to their business if they were hit by the proverbial truck. And they would just look at me blank. It never crossed their minds,” she said.

“They’re entrepreneurs who are excited and passionate about their work... It’s not something that comes naturally to think, ‘What would happen if I didn’t come into work tomorrow?’”

This led her to develop workshops and a [Business Will Workbook](#), which she sells online.

Ms. Verway said the contents of a business will can also help keep a company running if an owner suddenly becomes ill, incapacitated or is otherwise unable to stay in charge.

“I’ve had entrepreneurs whose children have died or their spouse has been in a health situation, and the business just takes a back seat, whereas if they had thought some of the challenges through earlier, when it wasn’t urgent, they could go to plan B and take away some of the stress,” Ms. Verway said.

Having a business will gives Ms. Butters “peace of mind that my hard work is not going to go for naught, that the government will not get half of it in taxes,” she said. “I think this is a more responsible way of estate planning.”

Mr. Brown agreed.

“Even if I’m done, I want the value and wealth and the livelihood of this adventure to stay running. In large corporations, presidents and CEOs are replaceable in a moment. Smaller family businesses, we’ve got to think.”

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