Estate Planning For Angus Cattle Raisers

by Robert Feinschreiber

Your business is probably your most important asset. Careful planning can safeguard your assets for future generations, but without advance planning your business may be besieged by creditors, competitors, unwanted heirs and the IRS. This article explores strategies for Angus cattle raisers.

Your Estate Plan

The first step in creating an estate plan for your business is to establish your own personal and financial goals. One of your primary goals should be the preservation of your business as an entity since it is worth much more as a going concern than if it is sold piecemeal in liquidation. However, it is difficult for a business to continue as an entity unless affirmative steps are taken in advance to preserve this business entity.

Your estate plan should be specifically structured to meet your goals. This estate plan should be based on accepted strategies that have passed the test of time as well as IRS scrutiny.

Everyone needs a will, but you need more than a will if you own a business. A will provides instructions to your executor for disposing of passive investments and personal effects. However, the probate of a will takes too long when decisions must be made for an ongoing business. Moreover, the probate process is closely supervised by the courts. Even an executor who is competent to run the business will be hindered by the need for court approval for any significant actions.

Everyone needs a will, but you need more than a will if you own a business.

Considerations

One important step in your estate planning process is to examine your tax exposure. Thoughtful estate planning requires careful consideration of federal estate taxes and income taxes. Estate tax exemptions are increasing year by year, but a successful business person may still be subject to estate tax unless appropriate steps are taken in a timely manner. State estate or inheritance taxes and income taxes may also need to be considered as part of the estate plan. For example, capital gains tax is not imposed at death, and estate tax is not imposed when property is left to your spouse. A restructuring of asset holding, especially between husband and wife, is often needed to take full advantage of these rules.

You may be tempted to make what appears to be an easy choice and give all of your assets to your spouse. However, it is often the wrong choice for Angus cattle raisers.

Choosing A Successor

Take a good look at your family and your employees. Now you are faced with your toughest task—finding your successor, the person who will continue your business.

You not only must pick your successor, but you must train this individual to take over your business. However, beware that a successor may try to take over too early or may leave to join a competing business or start a separate company. A carefully drafted employment contract can limit this potential competition.

Even if your business operates by itself during your brief absences don't assume things will take care of themselves after you are gone. If you want your business to continue, you must take steps to achieve this continuity.

The Buy-Sell Agreement

You may want to bring in family members or employees as co-owners to achieve your personal goals and your business goals. However, you need an agreement between the shareholders once additional individuals own stock in the corporation. If your business is not incorporated, a partnership agreement is needed between the partners.

Estate tax exemptions are increasing year by year, but a successful business person may still be subject to estate tax unless appropriate steps are taken in a timely manner.

There are many advantages to a buy-sell agreement between shareholders or partners. You can use the agreement to assure that your business will be sold to the party you select and assure management continuity. Even if the purchaser is not an employee, the employees can take comfort that the business will continue and you will succeed in removing your business from probate.

The buy-sell agreement can fix the purchase price and avoid disputes with the IRS, but these agreements are technical and should be drafted by a competent tax lawyer. The agreement needs to be funded unless the purchaser is certain to raise the cash from other sources. Life insurance is commonly used to provide this funding, and is often the best alternative for Angus cattle raisers.

The agreement can restrict an owner's right to dispose of his interest during his lifetime, so that the remaining owners must approve any purchaser. The agreement can provide for disability benefits to an owner who suffers a serious injury or illness, and can also provide for the optional or mandatory purchase of the disabled owner's interest in the business.

You may want to transfer all or part of any future increases in the value of your business to your heirs or successors. If your business is a corporation, one technique to achieve this goal is to issue preferred stock to yourself and common stock to the future owners. A similar device can be used for partnerships. Tax and legal aspects of this plan are complex, but the business benefits and the savings can be significant.

One strategy of achieving your estate planning goals is to make gifts during your life to decrease your taxable estate.

Other Strategies

Another alternative is to sell your business, but even this alternative requires planning. You may be able to sell your business on a tax-free basis if you accept the buyer's stock as payment.

An Angus cattle raiser that owns the facilities should consider separating the ownership of the business. This method enables your heirs who are not active in the business to receive passive income. However, any leases of these facilities from these family members to the business must be carefully drafted to pass IRS scrutiny.

One strategy of achieving your estate planning goals is to make gifts during your life to decrease your taxable estate. The new rules permit a husband and wife to give $20,000 each to as many different persons as they choose, each year, without paying any gift tax. Eligible gifts include part ownership in the business. Moreover, dividends or partnership distributions will then flow to the new owners of the business.

You may be able to secure an extended period for paying your estate taxes, but you must be able to prove that your business is a major portion of your estate. You may also qualify for a special low interest rate on unpaid estate taxes. However, advance planning is needed to secure these benefits.

When you are considering the estate plan for your business, it is a good time to review your retirement plan and severance plan. The plans often provide substantial death benefits.

Your business can be your legacy—or it can be buried with you. You must take affirmative steps to make sure your business survives. Consequently, you need to act promptly to develop the estate plan for your business. AJ

Robert Feinschreiber is a partner in the Key Biscayne, Fla., office of the law firm of Feinschreiber & Associates.