

The Estate Planning Meeting – A Checklist!

1. Legal names, addresses, dates of birth, and Social Security numbers of
 - You
 - Spouse
 - Children

2. Legal name and addresses of
 - your siblings
 - your spouse's siblings
 - your parents
 - your spouse's parents

3. A copy of
 - Any previous will or trust
 - Any previous powers of attorney
 - Any trust under which you are a beneficiary

4. A list of the legal descriptions of
 - Your primary residence
 - Any real estate you own or in which you have an interest (a parent's life estate)
 - Any mineral or operating interests you own

5. A copy of
 - organizing documents of a business in which you own an interest (operating or passive)
 - description of any partnership (if unwritten) in which you are a partner
 - lease agreements for real property
 - lease agreements for personal property

6. A list of bank and investment accounts
 - Name of bank or financial institution
 - Account number
 - Names of account owners
 - Names of account TOD beneficiaries
 - Names of authorized individuals
 - Personal or business account

7. A list of life insurance policies which includes
 - Name of policy owner/holder
 - Name of insurance company
 - Face amount of policy
 - Names of beneficiaries

8. A list of debts owed by you
 - Personally
 - Through your business entity
 - Secured (think mortgages, lines of credit, liens on personal property, co-signed loans)
 - Unsecured (think credit cards)
 - Bailments (things in your possession owned by someone else)

9. A list of debts owed to you
 - Personally
 - Through your business entity
 - Secured (think mortgages, contracts for deed,)
 - Unsecured (think loans to children, siblings)
 - Bailments (things in another person's possession owned by you)

10. A list of any unwritten agreements to which
 - You believe you are contractually bound
 - You believe others are contractually bound to you

11. A list of significant (financially or sentimentally)
 - Personal items
 - Collections

12. A list of charities to which you regularly give
 - Legal name and address

13. A list of potential interests in which you are named a beneficiary

14. A very short list of people you want to have as your
 - Attorney-in-fact for financial decisions
 - Attorney-in-fact for health care decisions
 - Executor of your estate/Trustee of your trust
 - Guardian of your children/Conservator for your children

Be ready to answer difficult questions, such as:

- Do you have any children born outside of your current marriage (whether from a previous marriage or not)?
- Do you have children you placed with an adoption agency?
- Do you trust the financial acumen of each of your children, or are you concerned that one or more are “spendthrifts”? Are any of them in serious financial trouble?
- Do you have a child with special needs? (these can manifest in a number of ways)
- Do you have some children who want to take over your business, but others that don’t want to participate? If so, have you thought about the need to “equalize” your generosity among your children?
- What if one of you dies prematurely? (accident, sudden illness)
- What if one of you becomes physically and/or mentally incapacitated?
- Do you have a good relationship with your children? With your children’s spouses?
- Are you or your spouse estranged from one of your children?
- Do your children get along well or is there known “friction” among them?
- Are you in business or co-own property with any of your siblings or your spouse’s siblings? Do you have a buy-sell agreement in place?

The accounting firm Deloitte published an excellent primer on business succession planning document¹ (over 70 pages!) which can be found on the internet. Here is a quiz from that document:

1. Have you defined your personal goals and a vision for the transfer of ownership and management of the company?
2. Do you have an identified successor in place?
3. If applicable, have you resolved the family issues that often accompany leadership and ownership decisions?
4. Does your plan include a strategy to reduce estate taxes?
5. Will there be sufficient liquidity to avoid the forced sale of the business?
6. If succession will one day require the transfer of assets, have you executed a “buy-sell” agreement that details the process ahead of time?
7. Is there a detailed contingency plan in case the business owner dies or becomes unable to continue working sooner than anticipated?
8. Have you identified and considered alternative corporate structures or stock-transfer techniques that might help the company achieve its succession goals?
9. Have you determined whether you or anyone else will depend upon the business to meet retirement cash flow needs?
10. Have you recently had the business valued and analyzed in the same way potential buyers and competitors would?

¹ *Business succession planning: Cultivating enduring value*, Deloitte (2015).

Hypothetical:²

Robert is a closely held business owner in his early 60s. Two of his children, Nathan and Emily, are relatively inexperienced at working in the business, and a third child, John, does not work in the business at all. Robert wants to scale back involvement in the business so he and his wife can move away and enjoy their retirement years together.

With outside help, Robert builds an estate plan that includes family partnerships and trusts that hold insurance and company stock. The family's perception is that the business succession plan is "complete."

A year later, Robert is ready to retire, but cannot because the siblings are floundering in their executive development. Robert relies more on non-family employees, who are not in line for ownership, to get things done. Nathan and Emily resent this. Meanwhile, John feels the salaries, company cars, and other benefits Nathan and Emily draw from the company are coming at the expense of his inheritance.

When Robert finally does pull away, Nathan and Emily assert their leadership in the resulting vacuum despite their lack of preparedness. Several important executives and customers leave, sales fall off, and the top salespeople go to the competition. John wants Nathan and Emily demoted or fired to protect the value of the inheritance. Robert worries about the value of his stake as a source of retirement funding.

Months later, company operations continue to suffer. The children are no longer speaking with each other and holiday get-togethers are cancelled. John forces a sale of the business for cash, but the family receives only a fraction of the amount that financial advisors and attorneys projected years earlier in the estate plan. Taxes eat half of even that disappointing sum. Nathan and Emily are not equipped to find similar high-level jobs elsewhere, and they struggle professionally. John blames Nathan and Emily for gutting his inheritance. Robert must revisit his post-retirement dreams. In the aftermath of the sale of the business, all the estate tax planning accomplished years before has been unraveled.

² *Business succession planning: Cultivating enduring value*, Deloitte (2015).

