

NEW YEAR'S RESOLUTION: SYNCING BUSINESS AND ESTATE PLANNING

By Tom Bolt

As we celebrate a new year, many of us see this as a clean slate, an opportunity to review our personal goals and objectives. What to do? Shape up, slim down, exercise. 2007 is no different. You've made your resolutions for the new year. You've decided it's time to get off your good intentions and shape up! But shaping up can also include your business and your plans for your family's future.

Many Virgin Islands businesses are closely held family-owned companies. Your family-owned business, like most companies, is likely to have a shareholders' agreement governing the sale of stock by the company's shareholders, including family members who may own stock. The senior members of your family are also likely to have wills that have been drafted within the framework of an "estate plan." As you began this new year, one question to ask yourself is whether your shareholders agreement is in sync with your current estate plan.

What will happen to your business once you're gone? Wealth transfer has become an important issue for many Virgin Islands businesses today. Family-owned businesses of any size should be concerned about estate planning. The fact is, most business owners should plan for the eventual transfer of their assets, regardless of any potential tax or legal consequences.

Business planning with a view to your estate plan can seem complicated, but the concept is fairly simple. The greatest challenge is deciding exactly what you want to accomplish with your estate and with your business. Typically, putting your business in sync with your estate plan involves the following objectives:

- **Control** – If you don't decide who gets what, the government will! A carefully drafted will allows you to specify who will receive your property when you die. A shareholders agreement will determine what happens to your stock upon your death or disability.

- **Conservation** – Your heirs could lose a sizable chunk of your estate to settlement costs and be unnecessarily burdened by a lengthy probate process. You can reduce estate shrinkage and preserve the business that you have worked to achieve through trusts, gifts and other options.

- **Liquidity** – If money is not readily available to pay final expenses, your assets may have to be sold, perhaps at bargain prices.

- **Survivor Care** – Depending on the ages and health of your survivors, you may want to provide income or funds through your business to assist in their future care.

Consider a family business owned primarily by the father with a few shares owned by his wife and a few shares owned by the children who are active in the business. Perhaps there are non-family officers who also own small amounts of stock. The company's shareholders agreement frequently will provide that upon the death or disability of any shareholder, the shareholder (or his/her estate) must sell his/her stock to the company and the company is often obligated to redeem that shareholder's stock at a price determined by reference to the agreement. It would normally be assumed that the father would die first and the redemption would provide cash for the mother's living expenses and to pay any debts or final expenses due.

The children active in the business probably end up as the principal owners of the business one way or another. If the father leaves his shares to the children, they will step into his shoes as the controlling shareholders. If the stock is redeemed by the father's company, the children's few shares are likely to become the controlling shares because their few shares would represent a far greater percentage of the smaller number of shares remaining outstanding after the redemption.

Special attention should be paid to the fact that if other company officers also own a few shares, then in the event of a redemption of the father's stock, they could become major owners of the company, on par with the children active in the business, without having made a significant investment in the enterprise. Also, if the father's stock is redeemed, the business that the children own may be so burdened with debt created to buy back the father's stock that it is not economically viable.



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It might well be better to leave the father's stock to the children rather than having it redeemed by the company. The children would then own a company not as burdened with debt, although it may still be necessary to provide funds to support their mother, and certainly to pay any debts or final expenses that the estate may owe. Many family companies elect to deal with this problem by the children providing support to their mother and by funding a partial redemption program with life insurance on the father's life. This approach has the further advantage of reducing the net worth of the company by the amount of premiums paid over time and thereby reducing the taxable estate.

Be sure that your estate plan is in sync with your corporate documents, including your shareholders agreement, and meshes with your estate plan, to achieve the results that you desire. For more assistance in planning for your business and your estate contact an attorney or another professional who is experienced in corporate law and estate planning.

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