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Trusted Counsel

2025 BUSINESS PLANNING GUIDE

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I. INTRODUCTION

As the owner of a small business or rental property, you are probably doing business as a sole proprietor, partnership, limited liability company, corporation or some other form of a closely held business. Most days, protecting your business or property, complying with increased government regulations, maximizing the value of your assets and planning an exit or sale strategy may involve more than you think you can handle yourself. Taking steps to secure your business or property through legal compliance and well-designed planning is easier than you may think.



II. FORMATION

Many small business owners operate as sole proprietorships or small corporations known as S- Corporations. Sole proprietorships are easy to set up but don't allow for protection of personal assets from liability arising from operation of the business. In this respect, a corporation is more advantageous. For businesses that own real estate, or for individuals who own rental property, camps, or other investment properties, a limited liability company provides for personal asset protection while giving owners more flexibility with respect to taxes and eventual sale of property.

Operating Agreements

An operating agreement is an agreement that regulates the affairs and conduct of an LLC and manages the relations among the members. Members have the ability to designate who controls the assets and the terms and conditions of succession to management. Further, operating agreements can detail the way in which ownership interests are transferred between owners and future owners.

Family Camps

Using a trust or LLC for a family camp can offer many benefits depending on your specific goals or circumstances. A trust can help with estate planning and allow you to designate how the camp property should be distributed after your passing according to your wishes without going through probate. An LLC can provide liability protection, separating the camp from your personal name



and assets. This can be valuable if you are renting the camp or if someone is injured on the property or if there are other liability concerns. Additionally, an LLC allows for a flexible management structure, which can be beneficial if multiple family members are involved in the camp's ownership and management. It can also allow you to decide how the camp is managed and who has decision-making authority.

III. MAINTENANCE

No matter the type of entity you use for your business, some yearly maintenance should be undertaken to ensure that you comply with corporate laws. All corporations and most LLCs are required to have an annual meeting of owners which should be documented and minutes kept in a corporate book. Any major decisions made by the owners of a business should be authorized in writing. Often, lenders or potential buyers of your business or property will want to see the written proof of authorization for major decisions. Additionally, your company's bylaws or operating agreement should be reviewed every few years to ensure compliance with current laws and to ensure that they reflect the way your business is being operated day to day. If new owners have come into the business, that new ownership should be documented as well, both legally and financially. We work together with your accountant or financial team to ensure that new ownership interests are correctly issued.

Preparation for New Reporting Requirements

Federal

The recently enacted Corporate Transparency Act (CTA) introduces new reporting requirements relating to Beneficial Owners of corporations and limited liability companies and arose out of the increasing complexity of corporate structures and the challenges they pose in tracing illicit financial activities. The CTA mandates that certain U.S. and foreign entities disclose information about their beneficial owners – individuals who ultimately own or control the legal entity – to the Financial Crimes Enforcement Network (FinCEN). All business entities must prepare to meet the new legal obligations to uphold the principles of fair and lawful commerce.

State

In line with federal efforts to enhance corporate transparency, New York State has taken a significant step with the introduction of the LLC Transparency Act. This state-specific legislation complements the federal CTA and applies only to LLCs operating within New York. The Act was signed into law by Governor Kathy Hochul and was passed by the NYS Legislature in July of 2023. Businesses operating as LLCs in New York will need to prepare for these additional reporting requirements, ensuring compliance and alignment with both state and federal regulations.

Corporate Counsel Program

Our Corporate Counsel Program is a unique service we offer to select business owners and organizations seeking peace of mind when it comes to corporate compliance and legal matters affecting their business. This program provides business owners with the advantages of having readily available legal advice just a phone call or email away. Our Program provides a multitude of advantages at a fraction of the cost of maintaining a full-time legal team. When you enroll in this program, you will receive:



Document Compliance: Ensure essential corporate compliance documents, meeting minutes, and other governance matters are up-to-date and consistent with your business purpose.

Prompt Legal Guidance: Prompt responses to your legal questions ensuring that you have the support you need when you need it.

Savings on Legal Services: Reduced rates on the cost of legal services that are outside the scope of the program.

IV. BUSINESS SUCCESSION PLANNING

Business Succession Planning refers to the practice of implementing planning strategies to increase the chances for the survival of one's business upon disability, retirement or death of current owners. Succession planning helps to ensure that the necessary accommodations are in place should one die unexpectedly or if a similar unexpected event should occur. Your succession plan can also help direct the future of your business when you want to retire. Selling the business to an outside buyer is an option, but you may want to see the business handed down to future generations, add new business partners, or sell to employees that helped build the company. Whatever your wishes, it is important to have a plan in place to provide for a smooth transition of the business and to integrate the business aspects with your overall objectives, to form one cohesive plan.



When thinking about succession or sale of a business, common goals for business owners oftentimes include:

1. Provide sufficient income for retirement;
2. Ensure a fair price at retirement or in the event an owner passes away prematurely;

3. Allow a smooth transition of management;
4. Reward children in a business and compensate children outside it.

Although a good business succession plan may be perceived as costly, the investment is small when compared to the potential consequences of not planning. A well- designed business succession plan will take into account the retirement income needs of current owners and will balance the needs of senior owners with junior owners who are the future. A successful plan will also encourage businesses to determine who is realistically capable of taking over and running the business once the senior generation is no longer there. By acting now, a plan can eliminate or limit family conflict that could ultimately destroy the business. Contrary to the common belief among business owners, one can begin to transfer ownership interests to children and still retain control over the business.

Buy-Sell Agreements

Whether you wish to transition your business to another generation or wish to have an agreement with partners in your business as to how the business will be managed if one of you isn't able to continue to work in the business, a buy-sell agreement is an important part of business planning. The buy-sell is an agreement between business owners to purchase and sell interests in the business at an agreed upon price in the event of certain future circumstances. These circumstances may include death, disability, incapacity, bankruptcy, termination of employment, retirement or an offer from an outside party.

A buy-sell agreement serves the interests of both the business entity and the owner's estate or family. It is beneficial to the entity because it promotes a smooth transition between ownership. It is invaluable to the owner because allows prohibition of the sale of an ownership interest to unwanted party, can help avoid disputes amongst owners or family members and it ensures that one receives a fair price for one's ownership interest.

The following checklist is meant to facilitate a discussion between business partners (or future generations of owners) regarding how to handle the succession of their business. Following this discussion, the partners would typically have an operating agreement or buy-sell agreement drafted to reflect their wishes.



Consider:

- *What do you want to happen if one of you dies?*
- *What if one of you becomes disabled?*
- *What if one of you wants to sell to a third party?*
- *How do you want to handle a dispute over the management of the business?*
- *How do you want to handle giving an incentive to key employees for their continuing contribution to the success of the business?*
- *How do you want to provide for retirement or long-term care needs?*

Revocable Living Trust

For solo business owners, a Revocable Living Trust may be able to ease the transfer of your business or property. A Revocable Living Trust is a complete will substitute. It can control all of your assets both during your life and after your death. This is done through transfer to the trust of your assets. You then name yourself as the Trustee and beneficiary. This gives you, and you alone, total and complete control of all your assets. When you die, there will be no assets left in your name, and therefore, no probate for your family to endure. Whoever you name as your successor Trustee will immediately gain control of your assets to distribute them according to your exact instructions. With a Revocable Trust your assets are available to your trustee upon your death; there will be no probate, attorneys' fees or court costs. Your Revocable Living Trust is an ideal vehicle to own your business by holding interests in your Limited Liability Company, shares in your corporation, or interests in your partnership. Again, you maintain complete control of your business interest during your lifetime, as well as direct its disposition after you pass. In this way, you can control how the business will be managed, by whom and for how long. At the appropriate time, the Trustee can transfer the business to your heirs. It will also enable a seamless transition of critical assets necessary for continuation of your business.



As with any planning, a good way to begin is to seek competent advice from a qualified professional. At, Pierro, Connor & Strauss we are dedicated to helping you find solutions to your long- term care concerns. Please call us at 518-459-2100 (Capital District), 212-661-2480 (NYC), or toll-free at 1-866-951-PLAN for a consultation, or visit us on the web at www.pierrolaw.com.

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