National Tooling & Machining Association
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Business Management Advisory

For Precision Custom Manufacturers

PL16 **File: PLANNING**

PERSONAL AND BUSINESS ESTATE PLANNING SOME DO'S AND DON'TS

SUMMARY

This helpful BMA is loaded with suggestions and options for the small business owner to consider in estate planning. Most comments are necessarily general in nature and are intended to be "food for thought" that you should discuss and research with your attorney and/or accountant before taking any action. As this "checklist" indicates, estate planning, if done effectively, is a complicated process involving a host of decisions that will ultimately effect your family and your business.

An estate plan is, in essence, a plan by a particular individual for three purposes:

- To create or increase his or her estate.
- To conserve his or her estate.
- To provide for an orderly distribution of his or her assets before and after death with a minimum of depletion from expenses and taxes.

Although the estate owner may know nothing about the technical aspects of estate planning, he or she is the only person, in the final analysis, who can decide what should be done with the estate, what risks should be taken to build it, what measure should be taken to preserve and protect it, how much to make available for the education of any children, how much should be allocated for retirement, who is to get what and when and innumerable other details.

Most of us are reluctant or unable to make every decision alone, and would be wise to seek professional assistance. Nevertheless, value judgments must be made by the individual. The estate owner must dictate the bottom line.

Recognizing that many persons understand the need for planning but are uneasy about seeking professional aid until they have obtained appropriate background information, this BMA offers some "do's" and "don'ts" in estate planning.

First and foremost, **DO** take time out from your busy daily schedule to plan how you will preserve the estate you have created. **DON'T** spend all your energy to build an estate and then risk losing most of it by not planning for its preservation.

DO seek out professional assistance—this will not only save you time, money, and anxiety, but you will be educated at the same time.

DO disclose the full extent of your assets and your liabilities once you have found someone you believe is competent and trustworthy. **DO** communicate to the planner your needs and objectives, and your feelings about your family members who will also be a part of the plan. **DO** disclose the details of your existing "plan." **DO** communicate your feelings about the plan's advantages and disadvantages.

DO beware of holding too much property in joint tenancy. The federal government routinely taxes 100% of jointly-owned property in the estate upon the death of one of the tenants. It is usually advisable to hold the family home, some savings or a checking account, and a family car in joint tenancy but seek advice before titling other property jointly. However, **DON'T** sever existing joint property without first finding out the tax consequences of your action.

DO have a will. Everyone has a legal plan for the disposition of their property, whether they realize it or not. Some have wills. Those who do not will have their property dispersed according to the laws of the state in which they reside. These laws, called interstate succession laws, will dictate the distribution of the decedent's estate based on the assumption that the decedent would have wished to distribute the property along a certain family line. Without a will, the distribution imposed by law may be contrary to what the decedent would have wished.

DO take care of your family first before making charitable bequests in your will. Time and time again a charity with a superior claim to the decedent's family has taken all of a reduced estate, and the family has been left with nothing. Charity begins at home.

If you have minor children, **DON'T** neglect to name a guardian.

DO consider which portion of your estate money will go to meet the expenses of your last illness, your estate's administration fees, and estate and inheritance taxes. If the burden of payment falls solely on your "residuary" estate, there may in fact be no residuary left to distribute.

DO take steps to ensure that the taxes and other liabilities arising at your death will be paid. Since these costs can be exorbitant, it is often advisable to purchase insurance to meet such liabilities, rather than deplete your estate assets. **DO** Prefund, as well as pre-PLAN.

DON'T automatically presume that you must be the owner of life insurance on your life, and **DON'T** presume that it is always wise to assign ownership of a policy on your life to your spouse. Seek your life underwriter's advice in this matter.

DON'T forget estate taxes are normally due within nine months of the date of death, and that extensions in the payment of these taxes are available only if you meet certain qualifications, and then only at the expense of having a federal tax lien placed against all of your property.

DON'T disinherit a family member without careful consideration. Lives have been ruined by some rather thoughtless acts. If you are displeased with a family member's conduct, consider tieing an inheritance to conduct that is more acceptable to you, rather than cutting that family member out completely.

DON'T overlook the possibility of making lifetime transfers to your family members, rather than waiting until after your death. Although transfers during lifetime are taxed in much the same way as are transfers made at death, there are some exceptions which may provide for an opportunity to lessen your tax burden. **DO** seek legal advice before embarking on a lifetime program of gifting.

DON'T fail to provide for the orderly transition of your business. A buy/sell agreement between you and a prospective purchaser—a partner, another shareholder, an employee, or a family member—is usually a must. With a properly worded buy/sell agreement, you can assure a market for your business and usually fix the value of the business for estate tax purposes. Furthermore, if you have guaranteed the funding of such an agreement (ordinarily through life insurance), your estate will be assured cash with which to meet administration costs and taxes, and you will create a source of inheritance for those children who do not wish to continue the business. (Also see the BMA covering Business Succession Planning.)

DON'T neglect to plan for your retirement. **DO** Investigate the option of deferring income on some of your income by diverting that income into a qualified plan. Also, **DO** Pay attention to the manner in which money contributed to the plan will be distributed at your death. If money remaining in the plan is distributed over a minimum period of 36 months, remaining cash will avoid federal estate taxation.

DON'T overlook your children's educational needs. In these days of rising inflation, it would seem wise to plan now for payment of your children's future education.

Take to heart some general comments about the planning process. First, **DO** plan—but **DON'T** over-plan. **DON'T** let the tax "tail" wag the dog. You must do what is right for your family, even if it means paying a few extra dollars in taxes. Secondly, **DON'T** feel that once you have made a plan, you do no further planning. As your circumstances change, your plan probably should too. **DON'T** remain static.

Finally, **DON'T** delay. Planning, be it some random thoughts or a call to your spouse, should begin immediately. Regarding estate planning, the old saying holds true: "There's no time like the present."

This BMA was edited by Barry E. Miller, Principal Consultant of the Barry E. Miller Company, which produces the Operating Costs and Executive Compensation Report and the Wage and Fringe Benefit Survey for NTMA. Mr. Miller provides consulting services in business valuation, executive compensation and strategic planning to NTMA members. He does not sell insurance, recommend personal investments, administer pension plans, or act as a business broker.