

Estate Planning Comes at the End, Not the Beginning.

Each step in the strategic planning process helps to inform the estate plan philosophy. This part of the planning process is unique to family business because it is about more than the assets. It is about family unity, the future of the business and the owner's legacy.



Integrating estate considerations into the strategic planning process includes open communications in the family and a means to visit the plan regularly. Estate planning should not be viewed as an event or one-time activity, but rather a journey that is informed by business and succession plans. The estate philosophy can evolve over time just as the business and family can evolve.

After completing this guide, participants should:

- Articulate the importance of an Estate Plan Philosophy as part of the strategic business and succession planning process.
- Identify the owner's long-term objectives for the business and family estate philosophy.
- Consider the differences between fair versus equal.
- Inventory all business and personal assets, asset values, and proposed distribution
- Develop an estate plan philosophy.
- Discuss alignment of the estate philosophy with business and succession plans and family members' personal goals.

Estate Plans vs. Estate Plan Philosophy

Estate Plan: The estate plan includes legal documents, entity structures, directives, binding and non-binding instructions and tax strategies that govern the transfer of assets from one generation to the next.

Many think of an estate plan as the plan for ownership and asset transfer after death, primarily to manage taxes. For family businesses, however, estate planning is about much more than just taxes. It is actually an extension of the strategic business and succession plans, and may include asset or ownership transfers prior to death.

The consequences of not having an estate plan can be significant. Likewise, the consequences of having an incomplete or uncommunicated estate plan can be equally significant, with impacts including:

- Increased tax liability
- Family discord or dysfunction
- Forced or unplanned liquidation of assets
- Business failure

Estate Plan Philosophy: The Estate Plan Philosophy is not a legal document, but it does clearly define goals for the estate plan, provides a general outline of desired asset distribution, and identifies key questions/considerations for the attorney, accountant and other third-party professionals. It is essentially the bridge between the strategic business/succession plans and the formal estate plan.

An effective estate plan philosophy enables communication with family members affected by the plan, provides a clear starting point for conversations with estate planning professionals and assures the estate plan is smart for the business and acceptable to the family.

The estate plan philosophy is not developed in one meeting, but through a series of conversations and meetings intended to assure the senior generation has all the information they need and the junior generation feels they have a voice in the process.

Defining Fair Versus Equal

One of the most common challenges building an estate plan philosophy revolves around the question of fair versus equal. Equal implies an evenly proportioned split of the business and its assets (e.g. a 50/50 split between two heirs). On the other hand, fair considers the business, current owners' legacy goals and each family member's participation in the business. A "fair" distribution may include unequal allocations of business and non-business assets depending on each successor's unique circumstance.

Questions of fair vs. equal are especially important when one or more heirs are working in the business while others have chosen a different life path. Assets are frequently divided into different categories in these instances to ensure family members in the business maintain control of the business assets and benefit from earnings re-invested in the business over their lifetime. It is important to clearly define who will control and make decisions about the business in the estate plan philosophy.

To help address the question of fair vs. equal, the senior generation commonly categorizes assets based on their importance to business continuity, with the goal of distributing the most business-critical assets to family members directly involved in the business. Below are common categories:

- Business assets
 - Core strategic assets (necessary for business continuity)
 - Non-core assets (valuable but not critical)
- Non-business or ancillary business assets
- Cash, investments and insurance
- Home sites, rental and vacation properties
- Sentimental items

It is important for each family member to understand the value of assets distributed to each person may not be equal when the goal is to ensure the business can operate into the future. While equal ownership of core business assets among business- and non-business family members can work, it generally requires more robust governance and decision-making structures to avoid disagreements, animosity or forced asset sales/liquidations.

It's important for all family members to recognize that business assets are different than cash, near cash equivalents or assets that can be sold easily without affecting business operations. Core business assets carry responsibilities, maintenance, investment, sacrifices and risks that make dollar-for-dollar comparisons misleading.

Ultimately, the owners of the business will need to define their long-term objectives and address the following as applicable:

- Define who will own/receive what and how assets will be allocated to align with the philosophy and vision for the business.
- Identify potential purchase agreements (if selling assets to the next generation), rental or lease rates and funding for the senior generation's retirement.
- Identify potential longer-term agreements for the business such as first right of refusal to purchase, lease terms and/or buy/sell agreements between heirs.
- Outline how business decisions will be made and who will bear the risk.
- Determine what happens if core business assets are sold.

This process is also helpful to identify key questions for attorneys and accountants who can assist in with the technical aspects of the estate plan. Consult professionals to inform and prepare items such as:

- Wills and/or trusts
- Life, health, key-person and/or disability insurance
- Power of Attorney or Health Care Directives
- Formal business agreements (buy-sell, rules of entry, pre-nuptials)
- Legal entity structure and ownership
- Tax management strategies

Developing an Estate Plan Philosophy

The senior generation should begin the estate planning process and is ultimately responsible for developing and communicating the estate plan philosophy. This is an important responsibility and one that will help ensure family members feel cared for, heard and have an opportunity to express their goals and desires. The following steps can make the process of developing the estate plan philosophy easier.

Step 1: Inventory all major asset buckets and categorize as appropriate.

Step 2: Create a personal financial plan and budget.

Step 3: Understand the needs of the family.

Step 4: Define your legacy.

Step 5: Draft a distribution list identifying which assets will go to specific individuals.

Step 6: Conduct a second round of conversations with individual family members to share the plan.

Step 7: Conduct a family meeting to review the final plan with everyone and discuss next steps.

Step 8: Utilize a professional to prepare the legal documents.

Step 9: Revisit the plan annually and adjust as required.

Use the [Estate Plan Philosophy Worksheet](#) for additional details regarding each step and as a tool to document the philosophy.

Recommended Next Steps:

- Schedule a dedicated time and create a standing agenda item at your annual planning meeting to review the plan and any updates.

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