



Mary Hanson

About the Business Advisor

The Business Advisor is written and published by Mary Hanson, a business attorney in Torrance, California.

Mary Hanson has a law degree from the University of Wisconsin and an MBA from the University of Southern California. She has practiced business law exclusively for more than 30 years.

She provides legal services related to owning, operating, buying, selling, and structuring businesses. Her clients are business owners in many different industries. She handles corporations, LLCs, new businesses, new ventures, and a broad range of contracts and business decision-making.

Her interests include flying and World War II.

Her law office is located in the Del Amo Financial Center, 21515 Hawthorne Blvd. #885, Torrance, California. She can be reached at (310) 543-1355 or by e-mail at mhanson@bizadvisor.com

PLAN B FOR THE DEATH OR DISABILITY OF A BUSINESS OWNER

by Mary Hanson

In addition to having a long term plan for retiring, selling, transferring, or transitioning a business to the next generation, a business owner needs a Plan B to deal with unexpected events that could render the business owner unable to run the business.

Though it may be impossible to create a detailed plan for unexpected events, a business owner who is key to the business needs to have a basic plan for a sudden exit from the business. The key business owner should know how well the business would weather the sudden loss, what the greatest challenges would be, what should be done with the business in the event of a sudden loss of the key owner, and what person or persons would implement the plan to manage, sell, transfer, or liquidate the business.

Without time to fix problems, build a stronger management structure, or improve the financial condition of the business, the options at the time of an unexpected loss will be limited by the condition of the business at the time of the unplanned event.

What are the key challenges that will face the business in the event of the sudden loss of the key owner?

How likely is it that the key challenges could be overcome?

What are the vulnerabilities of the business? Given the vulnerabilities of the business, what plans for the business are feasible? Does one option of selling, transferring,

liquidating or continuing operation of the business stand out as the best?

What person or persons have enough knowledge of the business and the capability to implement a plan for selling, transferring, or continuing operation of the business?

Vulnerability Profile

- Does the business have poor profit margins, high overhead, or slow paying customers that make the business financially shaky?
- Is the business location in jeopardy because of rising rent, expiring leases, or some other problem with the facility or community?
- Does the business owner perform two or more key functions of the business? Would the business owner have to be replaced by two or more people? Would some services provided by the business owner be difficult or expensive to replace?
- Are key employees close to retirement or otherwise unable to assure continuity of the business?
- Does the business use outdated technology or otherwise present a technology challenge for a successor?
- Is the industry changing so that the business needs new investment to keep up with customer requirements or competitors' goods or services?
- Is there heavy equipment that would cost more than the value of the equipment to move?

▼

“... a business owner needs a Plan B to deal with unexpected events that could render the business owner unable to run the business.”

- Is there a lack of other management personnel with authority to negotiate contracts and otherwise legally act on behalf of the business?
- Are there any on-going or threatened lawsuits that jeopardize the survival of the business?
- Does the business provide a job for two or more family members? Does the desire to keep family members employed affect decision-making and business planning?
- Does any one customer generate more than 20% of the regular revenue of the business?
- Does the business rely on a key vendor, key employee, key product, or key advantage that keeps the business viable?

Effect of unexpected death or disability

A business owner needs to have a good understanding of how well the business would function without the business owner on a temporary or permanent basis.

- Would the business lose sales or customers in the event of the business owner's death or disability?
- Would the business be unable to complete work in process without the key business owner?
- Are other employees able to provide the services currently provided by the business owner?
- Would it be difficult to hire a new employee or consultant to provide the services provided by the owner?
- How long could the business continue without the key business owner?

- Would the business have access to adequate funds without the business owner?

Alternatives for the Business

A business owner should identify the alternatives that would be feasible for the business in the event of his or her death or disability. The typical options are:

- **Selling the business as an on-going concern.** This option is the best option for realizing value from the business, continuing employment for the other employees, and relieving the business owner's successor from financial and management burdens.
- **Continuing the business by replacing the absent owner.** A family member, newly hired employee or consultant, or an existing employee with management capability might step into the business owner's shoes. Bringing in new management can be time-consuming, expensive, and disruptive. A stable and profitable business with significant management infrastructure would be expected to continue by replacing the key person. A business that is dependent upon the key business owner or that has serious vulnerabilities may not be a good candidate for this option.
- **Transferring ownership to an interested family member.** This alternative makes sense only if the family member has worked for the business and can manage the business. Otherwise it is unlikely that a family member would have the knowledge and skills needed to step in and immediately run the business.

PLAN B FOR THE DEATH OR DISABILITY OF A BUSINESS OWNER

- **Liquidating the business by selling all tangible and intangible assets.** No matter whether the assets to be sold include technology, a customer base, retail goods, or commercial products, an orderly, well-planned sale of all assets provides the best situation for realizing value for the assets and avoiding liabilities for unfulfilled obligations.
- **Closing the business by gradually selling down inventory and completing work in process.** If there are contracts to fulfill, leases with months before expiration, and large equipment that should take a long time to sell, this slow exit from assets and liabilities can make more sense than a sudden liquidation, providing that someone can implement and execute this plan.

It should be noted that failing to identify or implement a feasible plan makes it more likely that the business will experience a default alternative – being run into the ground until bills cannot be paid, employees cannot be retained, liabilities have increased, and the business is unsaleable.

Who will step in to implement Plan B?

In addition to the need for a feasible Plan B based on the existing condition of the business, there is a need for a person to implement the plan. The key questions for identifying that person include:

- Is there someone who is currently working at the business or who otherwise knows the business who could step in to implement Plan B?
- Does that person know what he or she would have to do? Does

this person understand the vulnerabilities of the business?

- Would it be necessary to bring in someone not currently involved in the business to implement the plan?
- Does the implementer currently have authority to act on behalf of the business?
- Does that person know the other key people who could assist or advise?

Implementing Plan B

If the key objective of Plan B is to sell the business as an on-going business to generate funds in the event of the business owner's death or disability, the business has to be operated in a manner that keeps the business looking attractive to potential buyers. It can take many months to find a buyer and sell a business. The business needs to be profitable and viable without the key owner in order to be attractive to buyers. In addition, the business needs to have a financial cushion in order to survive the sale process.

If family succession is an objective of the business owner (or the children of the business owner) business plans and personal circumstances must be consistent with that objective. If family succession is feasible, the family members expected to run the business must be involved in the business and exhibit the interest and the skills needed to run the business. The business needs to be run in a manner consistent with family succession, with the future managers acting like managers and key employees respecting the transition to another generation of the family. The business needs to be profitable and have a financial



“A business owner should identify the alternatives that would be feasible for the business in the event of his or her death or disability.”

Business Advisor

a resource for business owners

FROM THE LAW OFFICE OF MARY HANSON

21515 Hawthorne Blvd. • Suite 885 • Torrance, California 90503 • (310) 543-1355

PRSR STD
US POSTAGE
PAID
TORRANCE CA
PERMIT #43

RETURN SERVICE REQUESTED



Publisher's Note

A trust is helpful in the event of the death or disability of a business owner because of the broad powers a successor trustee typically has to take action with regard to business assets, a membership interest in an LLC, or corporate stock. In the event of a business owner's death a trust avoids the delay and expense of probate court approval. If a trust is the 100% owner of a corporate business, the trustee can replace the Board of Directors and replace the officers, giving himself or herself the authority to hire new management, engage consultants, negotiate sale of the business, handle financial requirements of the business, and take other steps to implement the appropriate Plan B.

For example, a spouse who is expected to sell an incorporated business in the event of the death or disability of the business owner, would need to know if he or she should hold a shareholders' meeting and name himself or herself as the sole director, hold a meeting of the Board of Directors and name himself or herself as President, and take steps to sell the business as expeditiously as possible. Being briefed on Plan B and the steps to be taken should take some of the stress out of the situation and save precious time. If there are other shareholders or other complexities, there is a greater need for a plan, an understanding of the steps involved, and identification of key advisors who could help in executing the plan.


Mary Hanson
Attorney/Publisher

Business Advisor

a resource for business owners

FROM THE LAW OFFICE OF MARY HANSON

cushion in order to cover the costs associated with the transition and to withstand missteps made in the transition process.

If the plan is to continue the business with replacement management, the business must be of a size and financial condition to be attractive to capable outside management. The time to bring in outside management is before any unexpected event renders existing management unable to continue. Every business should aspire to reach a size and financial condition that is attractive to outside management talent. A deep bench of management talent is the best protection against loss of the business in the event of the loss of a key business owner.

Whatever the plan is, it must fit the facts of the business and the circumstances of the business owner. The implementer of the plan needs to know what the challenges and limitations of the business are and what courses of action are feasible.

The potential successor needs to know what authority he or she has to implement Plan B and how to exercise that authority. If the business is held in a trust, a co-trustee or successor trustee has broad powers to sell the business or take other actions in the event of the business owner's death or disability. But the successor needs to know what steps to take to utilize his or her authority and effectively implement a Plan B. **BA**