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## Business Succession Choice of Entity

Any worthwhile review of succession and estate planning for businesses starts with the inquiry: what type of legal form has the business chosen to take? There are four basic types of entity from which to choose:

- Sole proprietorships
- Partnerships (including general partnerships, limited partnerships and limited liability companies)
- Subchapter S corporations
- Subchapter C corporations

Each of these entities has particular characteristics which affect the owner's choice as to how the business will conduct its affairs. For example, a general partnership provides no personal liability protection from creditors of the business. Most entities require strict adherence to corporate formalities, and some provide more flexibility than others when it comes to making gifts of business interests to family members. Certain compensation and retirement plan options are only available with C corporations, but the so-called "double taxation" (income tax on transactions at the corporate level and again at the shareholder level) can outweigh the benefit of those options, often making this entity choice undesirable for many small business owners.

In the context of succession and estate/gift planning, entity choice can either facilitate or frustrate the owner and planner alike. Limited partnerships and limited liability companies can enhance gifting strategies, allowing for retention of control by parents, while corporations can allow for both voting and non-voting participation by children in the family business. Income tax consequences of contributions, distributions and terminations (during life, at death or upon sale) differ markedly, including capital gains tax traps and unanticipated taxable "compensation" from a corporation receiving or distributing the asset.

There are many issues to be addressed by the business owner, with support and guidance from one's team of advisors (accountant, attorney, financial/insurance consultant and appraiser). If properly addressed, the business will have the greatest chance to provide a livelihood and a source of pride, as well as a valuable asset, for generations to come.

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