Hello. This is Wayne Rivers at The Family Business Institute. Thank you for tuning in. Please pay attention to our upcoming Boot Camp offering. There's some information about that below. You can get in touch with Charlotte. And also, we'd love to have your comments as we do these blogs.

This week, I want to talk about classic family business estate planning mistakes. And why is this important? All of our clients have gotten with their advisors and attorneys, and they've done extensive estate planning, but we still see lots and lots of, I won't call them errors, but just mistakes that sort of defy common sense. And this week I want to talk about a specific case study that came from Private Wealth magazine. So, there there's a couple 87 and 85 years old, and they're very wealthy. They've created a successful business and their estate is worth about $50 million, which is ... Congratulations. They are very successful.

They've got four children. Their oldest son works in the business. 55 years old. He's married. His wife also works in the business very productively, and she's 54 years old. And there's a 54-year-old daughter, a 52-year-old son, and a 50-year-old daughter. Those three, the 54, 52, and 50-year-olds do not work in the family business. So, the article talks about mom and dad going to the attorney and some of the things that they decided to do to make their estate equitable among their various children. What they ended up doing, they decided that upon the death of the second of the couple, the 87, 85-year-old, that the business and all their assets, in fact, would go 50% to the son who works there. Because after all, he has contributed mightily to that $50 million net worth.

And then the other three siblings would get 16.66667% of the estate, and they would share 50% with their brother who works there. Okay. Now on the surface, that sounds like a good plan. There's assets going to the surviving spouse, whether it's the husband or the wife, so no estate taxes at the first death. And then ultimately, the son who's in the business gets the lion's share of the assets, which, depending on your philosophy, might work for you. Okay? So, I immediately saw four problems in this plan. All right.

The first problem is a hundred percent of the business is owned by the 87 and 85-year-olds. And furthermore, if one of them were to pass away, the entire estate goes to the survivor. He said, "Well, that's good because they need to buy groceries, and they'd have to pay for their healthcare and all those kinds of things."

It's really a problem and this is the reason. If one of those 87 or 85-year-old were to pass, now, the survivor is likely to live, get this, about another 10 years. Which means that now, their son who runs the business is 65-year-old, which people once considered normal retirement age., 10 years is a long time in business. So, I think through gifts, through maybe using part of their unified credits, through purchases and sale arrangements with the various children, move the assets now. Why wait? Why wait with a $50 million estate and a super successful business? Why wait five, 10 more years, maybe longer before moving the assets to the people that are going to end up with them anyway? That doesn't make any sense to me.

Second problem is again, why wait until death? As they move these assets over, they need to be supported with a really robust buy-sell agreement. And that would solve a host of problems including assets going to in-laws who may or may not be capable of handling those assets. It solves a number of problems. Buy-sell agreements are so critical in any business situation where you've got multiple shareholders. Even if somebody just owns one share, still, a buy-sell agreement is a must. And we've looked at hundreds of buy-sell agreements over the years on the part of our clients. And we found, I think, 35 or 36 critical elements that need to be considered, maybe not implemented, but considered in every buy-sell agreement. So, we can talk about that some other time. But a buy-sell agreement is an incredibly complicated document, potentially, but very valuable because it solves a host of problems.

The third problem. This is a big one. The article stated that the parents had planned with their advisors. None of the succeeding generation knew what the plan was. This employee son has the responsibility of running the business day-to-day. He's 55 years old. These children are not kids. I mean, these are grownups with their own families, and they pay their own bills, and they have their own homes. And mom and dad aren't communicating what's going to happen to the very business where at least one of them works? The asset that makes up the bulk of the family's net worth. No communication.

This has always flabbergasted me, that moms and dads, irrespective of age, irrespective of the talents of their kids, seem to think that they have to plan in a vacuum. And they huddle in a dark room with the attorney and the other advisors, and they map out all this stuff, and then they go home, and they don't tell anybody what it is. They don't share the documents. How foolish is that? That's just myopic. You wouldn't plan for your business that way. Why would you plan for your estate that way? That just doesn't make any sense at all.

And then the fourth problem. Another big one. 50% of the estate to the employee child. Okay. If that's their philosophy, I'm okay with that, I'm not going to quibble about that. 50% to the other children, the other three children. The potential for deadlock. Again, they don't have a buy-sell agreement. The potential for deadlock is there, and that can be devastating. One side or the other needs 51%. The other side, less. You can protect both sides with various documents, including the buy-sell agreement. But you could say, for example, if the son who runs the business were to get 51%, well, might he run roughshod over his brother and two sisters? Maybe. But create a separate document that says, "He can get paid this. His bonus can be that. If he hits these milestones, he gets paid. Distributions are going to be this way." Distributions are going to have to be equitable anyway.

You can put all kinds of requirements, job requirements. So, the non-employee siblings can be protected from their employee sibling and vice versa. Because nobody wants to be whipsawed by somebody with greater leverage. So, put in place a document or documents, plural, that allow those people to feel good about their interactions. How often does the son who runs the company have to report to his siblings and what kind of reporting needs to go? Those things can be specified, and that makes everybody feel better. They know what's coming, they know exactly what to expect and when to expect it, and it will eliminate a great deal of weeping and gnashing of teeth. Okay.

Now, this is Wayne Rivers. I would like to hear what you think about this plan. Good, bad, indifferent. Maybe some ideas you have for how to improve it. And again, when you're talking about planning for an estate that involves a family business, try to use all the common sense you can and try to draw all the emotion you can out of the planning process, so you get a good, rational, well-thought-out program. Thanks very much. This is Wayne Rivers at The Family Business Institute.