The Best Gift You Can Give Your Family and Yourself is a Succession Plan for your Family Business

Panelists: Jim Balthaser, Thompson Hine LLP & Tony Kington, Chester Willcox & Saxber

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At the Conway Center for Family Business, Jim Balthaser, a partner and chair of the Private Companies Practice Group at Thompson Hine LLP, and Tony Kington, a partner and family-owned business chair at Chester, Willcox, & Saxbe LLP, shared information and suggestions for successful succession planning based on their experience of working with family business clients.

They noted that although succession planning is not unique to family businesses, the family business issues that go with succession planning are unique. When considering your succession plan, the first item you should think about is who the successor will be. There are many choices to consider and the right choice is different for each business. You should consider family members and key non-family employees, but you may also want to consider establishing an ESOP or selling to a third party.

Tough Questions

To make the planning process easier, it is helpful to start out by addressing the following questions that Balthaser and Kington presented in their "succession planning decision model".

> **1. Do you currently have management in place to run your business?** Or to put it bluntly, someone who can sit in the "big chair" when you're not there? For example, your spouse may know your accountant and your attorney from social situations but does he or she know who your key vendors are, what legal issues your business deals with or vital financial information for running the business? You need to determine if someone in your business is ready to become its leader or begin training a successor in the details that are unique to your business.
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> **2. Will your family receive sufficient income to survive from the sale of your business?** If you sold your shares of the company how would it affect your bottom line? How will your exit affect your company's finances? It's important to take a realistic look at the numbers now in order to prepare for the future.

3. Is your family active in your business AND willing/able to remain active in your business? Is there someone who will sit on your board of directors that is qualified to oversee business issues? The answer to this question will help you determine if it's practical to keep the company in your family.

4. Do you have a qualified buyer? Although you may not be thinking of selling to an outside buyer, you may want to consider this option and its financial repercussions to make informed succession decisions.

Based on the answers to these questions, you can then ask yourself, where do we want to go? What is our goal? Can we and do we want to continue our business? Do we need to consider selling our business? The process really starts with asking yourself these questions and then honestly evaluating the answers so that you can create a plan that works for your business.

Tougher Issues

Succession planning is difficult to address because the two main issues involved are tough to discuss – your death and your money! Once you get past the difficulty of addressing these issues, it gets easier. However, difficult or not, it is much better to begin the process now than for your family to have to deal with after your death.

One difficult but key decision that will ease the succession planning process for everyone involved is choosing a successor. When making that choice, the first and most important rule is that there should not be any surprises. You should pick a successor based on the roles necessary for your business, the skills and experience needed for each role, and then determine who can best fill those roles. Then take the time to help the right individuals grow into and take on those roles. Finally, be sure to openly communicate your choice to key decision makers in your business so that they can work together to plan for the future.

Another difficult issue to address is the division of the business among family members. The first thought is typically to divide everything equally. However, equal may not translate into fair when you are dividing up a family business. Be sure to look at all forms of compensation, including income and equity, and consider how you should divide them among family members in a way that will allow the business to continue successfully.

Take Action

For anyone working on a succession plan, there are some action steps to take that will ease you through the process.

1. Choose a new leader(s).
2. Mentor your new leader(s).
3. Create a timetable so that everyone knows what to expect and when to expect it. Be sure to communicate this information to everyone involved.
4. Develop an exit plan.

5. Let the new leader(s) lead while you still can. Be careful not to undermine their new leadership by stepping in to make critical decisions. It's okay to consult with your new leader(s) and offer them guidance but they need to be the leader both on paper and when it comes to making both day-to-day and important decisions.

Key Considerations

Balthaser and Kington also shared these key recommendations for succession planning:

1. Start early. The planning process should begin five to ten years before you plan to retire. This gives you time to groom and train your successor.

2. Involve your family. Start an open dialogue with family members that allows everyone to voice their desires and discuss all options. The person you think may want to be your next leader may not be interested in taking on that role.

3. Evaluate your family realistically. Take some time to think about family members. Can they get the job done? Will they get along? Do they even want to be the owner?

4. Set up shares and interests. Again, don't just think in terms of equal distribution. Equal shares may not be fair based on other aspects of the business and your estate. Look at ownership vs. management issues and determine a fair distribution of shares.

5. Train your successor. Use the time that you are still active in the business to pass on the knowledge you've gained and share your experience.

6. Develop a transition plan. It's important to have the details in writing so your business has a clear course of action.

7. Involve outsiders. By using an advisory board, a business coach, or other professionals you get honest answers from a fresh perspective. Outside input also helps to keep you on track.

8. Develop non-business interests.

Buy-Sell Agreements

Another key issue to address is your company's Buy-Sell Agreements. First think about what you want to achieve. Then consider when the buy/sell will occur. What is the trigger event? Is it death? Disability? Normal retirement? or something more unexpected like bankruptcy or divorce?

Next consider price. Will you tie the price to a particular formula, for example EBITDA? Will you be able to determine an agreed value? Find out what the appraised value is now so you can factor that into your calculations. Some business owners are shocked to find out that the value they place on their business is far different than how it is appraised by an outside appraiser.

Finally, consider the terms and funding issues. Where will the money come from? Some options to consider include life insurance, seller financing and bank financing or a combination. Make sure you have considered all of your options.

Conclusion

The bottom line is that succession planning is an issue that needs to be addressed and worked on far before it becomes a necessity. By opening the lines of communication and discussing the future of your business with your family members and key employees in your business you can start the process that will ensure the continuity of your business for years to come.

For questions about this presentation or to get more information about succession planning, please contact Jim Balthaser, Esq,. at jim.balthaser@thompsonhine.com or Tony Kington, Esq., at tkington@cwslaw.com