Exit Strategies – Selling the Business

Presented at the CREIA Fall Conference
1:30 – 3:00 p.m., September 6, 2013
Doubletree Hotel, Sacramento

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Why do I need to think about this?

- Orderly transitions require planning.
- Preferable tax treatment may require an extended process.
- New owners/heirs/managers may need time to learn the business.
- Provides direction for the future.
- May increase current productivity.
- Shows employees the company has a vision for its future.

It's important to have someone who you totally trust, who is totally committed, who shares your vision, and yet who has a little bit different set of skills and who also acts as something of a check on you. Some of the ideas you run by him, you know he's going to say, "Hey, wait a minute, have you thought about this and that?" The benefit of sparking off somebody who's got that kind of brilliance is that it not only makes business more fun, but it really leads to a lot of success.

- Bill Gates

Initial Questions

- Is the business worth transferring?
- Does it need capital to operate – or grow?
- Is the next team ready to manage the business?
- Does someone really want the business?
- Can I still own it, but let someone else run it?

Can the business be transferred?

- Is it tied to my personal involvement, skills or knowledge?
- Can the needed knowledge and skills be transferred?
- Will existing clients stay with a new owner?
- Does the business own assets that can be sold?

What tools are available?

What should happen now?

- Is a business "entity" already in place?
- Should I have one?
- Do I have a Buy-Sell Agreement?
- How does this fit into my estate planning?
- Do I need to raise capital?
- What about direct transfers or gifts?
- Should I consider a merger or other form of business combination?

Which tool is right for me?

- The proper tool or combination of tools will depend on your situation:
  - Who currently owns the business?
  - What type of entity is involved?
  - What does the business do (does it also renovate or develop property)?
  - Who are the intended successors?

So what are my next steps?

- DON'T WAIT! Start now!!
- What are my goals?
  - Do I want to retire? When?
  - Who should run the business when I retire?
  - Who do I want to own the business?
  - What do I want for my employees?
  - Can I accept payment for my business over time?
- Get legal and financial advice now to accomplish my goals.

You've got to be very careful if you don't know where you're going, because you might not get there.

- Yogi Berra

Direct Transfer

- A direct transfer of shares or ownership interests is often used as a method of "last resort" – because the business owner has failed to create an adequate succession plan.
- Direct transfers to purchasers often result in adverse tax consequences to sellers if the transfers are not properly planned.

Existing Entities

- Determine whether operational control is separated from income from the business.
- Trusts or LLCs are often used where businesses must be considered in conjunction with a general estate plan.

Buy-Sell Agreement

- Every business that has relatively few owners should have a buy-sell agreement.
- The agreement says what will happen to an owner's interest on death, disability, divorce, retirement, etc.
- A buy-sell agreement often indicates when funding sources are available for buyouts
- The agreement should specify a method to value the ownership interest.
- Don't forget to "fund" the buy-sell.

Voting Agreements / Voting Trusts

- Typically voting agreements obligate shareholders to vote their stock in a certain way.
- In a voting trust, the shares are transferred to a trustee who votes them as directed; the owners retain beneficial interest of the shares.
- Voting agreements and trusts can be used with other tools to transfer control to competent voters.

Securities Offerings

- Essentially all business entities can raise capital to further business development; these alter existing ownership structures.
- Any securities offering must comply with federal and state securities laws; these add to costs and can delay the fund raising.
- Certain securities offerings enable purchasers to enjoy tax advantages not otherwise available.

Mergers and Business Combinations

- When third parties buy a business, a merger or other form of business combination might limit tax liability.
- These combinations require advance planning to ensure the desired goals are met.

Estate Plan

- An overall estate plan is essential for a family owned or operated business.
- A clear estate plan, including succession planning, often diminishes tension among heirs.
- When an estate plan is established early enough, gifting may limit adverse tax consequences while broadening the group of owners within your family.

Questions

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