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Family business succession can take more thorough, thoughtful planning

by Lee Nelson

It's not an overnight thing. Planning for succession of a business to family members takes time along with involving several people and some finesse dealing with family issues.

"A successful business succession plan requires a team-oriented approach," said Jesse Sitz, partner at Baird Holm LLP.

He usually sees the following parties involved include family members, a CPA, investment advisers, an insurance adviser and an attorney.

"The biggest problem we see is business owners that are so busy running their businesses on a day-to-day basis that they fail to create a succession plan at all," he said.

Other problems generally involved change in family dynamics, change in the marketplace in which the business operates, changes in laws, and changes in availability of capital.

"Gifting is one way to transition a business from one generation to the next," he said. "Another option is to sell business interest to a family member. Often, we see business

succession plans involving a transaction that is partly a gift and partly a sale."

Many special factors and considerations must go into gifting a business to a family member.

"One consideration is whether ownership interests in a family business will be given to all family members or only to family members who participate in the business," said Ken Kingma, partner at Husch Blackwell. "Another consideration is whether family members who receive gifts of ownership interests in a family business should be prevented from transferring their interest to spouses or third parties."

In that regard, a buy-sell agreement is often used to restrict the transfer of ownership interests, but the agreement is usually flexible enough to provide a mechanism allowing a family member to dispose of ownership interest in certain circumstances, he said.

"For example, a business

owner needs to determine whether it is best for the family or the family business to give ownership interests in the business to certain family members and not to other family members," Kingma said.

Business owners who gift

ownership interest annual up to the amount of the federal annual gift exclusions (\$14,000 currently per person) can transfer a substantial amount of the ownership interest to family members in a relatively short time, he said.



Kingma

Mary Vandennack, managing and founding member at Parsonage Vandennack Williams, said a key issue is how to value the business and how to value the contributions of any family member actively participating in the business.

"Another issue may arise if the business constitutes the bulk of the estate, and there are four or five beneficiaries but only one is active in the family business," she said. "A parent might want the beneficiary who is active in the business

to be able to keep the business intact. If the estate splits equally among the entire family, the active family member may have to buy out the other beneficiaries."

This can be a deterrent unless consideration is given to designs that will make continuing the business possible, she said.

The process of giving a business to family members should start depending on the overall size of the estate of the business owner, the business owner's desire to retain control, the owner's age and overall desired structure, Vandennack said.

"For example, perhaps the best ultimate succession plan for the business involves selling the business to a third party," she said. "A deliberately considered business structure can prepare a business for all forms of possible succession rather than just that of to a family member."

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