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LUKINOVICH
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Lukinovich, APLC has law offices in Metairie and Baton Rouge, Louisiana. Our areas of practice include estate planning, wills and trusts, business planning, wealth preservation, probate administration and charitable gift planning.

Our mission is to devote our best skills, efforts and resources to advise our clients enthusiastically and creatively to accomplish their business, tax, family and estate planning goals and objectives, and we offer superior personalized attention with the utmost regard for privacy and confidentiality.

Learn more about our areas of practice online:
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Suggested Reading:

The 7 Habits of Highly Effective People
By Stephen R. Covey
(List the 7 Habits on your bathroom mirror; this will assure you success in anything you do in life!)

GETTING YOUR HOUSE IN ORDER & PREPARING FOR THE FUTURE OF YOUR BUSINESS


Justin T. Mannino

For several years, our team at Lukinovich APLC has been engaged in assisting our clients with the business succession planning for their closely-held family businesses. If you pick up any publication regarding family businesses, they generally indicate that a closely-held family business has a strikingly lower chance of survival as control and ownership is passed from generation to generation. Our goal is to pave the path for the efficacious transition of ownership and control to sustain these closely-held family businesses, which many consider as the backbone of America.

The key to success in this area is planning. The death of the majority member or shareholder of a business will cause undeniable personal grief for the people closest to the decedent, so proper planning of the transition is essential to alleviating some of the burdens in transitioning a business. Often times, however, there may be a good opportunity for the majority member or shareholder to transition ownership during his or her life. In this instance, generally speaking, for any closely-held business, there are only a few options as to who will take over any business: (1) a family member of the shareholder; (2) a key employee of the business; or (3) an outside third party. There are plenty of mechanisms to structure any one of these transactions, and every situation presents its own set of challenges and considerations. In any event, you cannot always pinpoint when an exit from your business will occur or when precipitating events or circumstances will make it such that you need to exit your business in a hasty manner. As such, the focus for this article is “getting your house in order” so that you and your business can be ready at any instant to move forward with a transaction.

We all know what the requirements are for “getting your house in order” – organizing and cleaning. It certainly behooves your business to organize or arrange your affairs and clean up any problems in advance of a potential transaction. We often hear clients complain that the due diligence process and negotiation of a business succession transaction takes significant amounts of their precious time away from their business, and it is consequently harming their business. If you choose to get your house in order, you are choosing to be proactive and to focus your time and effort on things that are totally within your control, and your proactivity will ultimately cause less of a burden to your business. Here are a few of the things you should consider doing as you prepare your business and position it for a transaction:

1. Assemble your professional team. Any transaction will require the involvement of a team of professionals, most often your accountant, your attorney, and your financial advisor. This team will help you to perform the tasks associated with a transaction and will be able to provide you with advice as you navigate and steer the transaction.

2. Know your value. In any transaction involving the sale or donation of a closely-held business, you need to know the value of your business. Stated plainly, “how much is your business worth?” Here are some proactive steps you can take in this area:

    a. Talk to peers in your industry or a similar industry who may have recently sold their business and ask about their valuation. Did they use some multiple of EBITDA to reach a purchase price, hire an outside qualified business appraiser to provide them with the value, or did they reach the value by some other metric? Often times, your peers may be your best resource – and may be your best potential buyer.

    b. Hire a firm to prepare a business valuation. A valuation firm can provide you with a general idea as to the value of the business in the eyes of a hypothetical willing buyer. A qualified valuation professional will be able to help you assess and review the business in light of industry competition.

3. Review, revise, and implement corporate governance documents. As you start getting things in order for the business, it is a good idea to make sure that you have created the appropriate accommodations for the control and ownership of your business in the event something happens to you. If you are the majority owner of your business, consider what will happen if you become incapacitated or die. More importantly, what happens if this occurs during the due diligence and negotiation of a potential deal? You do not want the train to run off the rails. You may need to revise or implement corporate governance documents that dictate which individuals may act in this instance in order to move the business forward successfully in your absence. For instance, you could create a governing board that may or may not be composed of the individuals who own the business.

4. Prepare proper financial records for your business. If you have a great business but sloppy business records, then any transaction is going to cause you a few headaches! A buyer is going to want to see financial statements of your business that show that the business makes money and has good systems in place. It’s time to clean it up – and the sooner, the better! Make

sure that your business transactions are recorded properly and remove any personal expenses from the financial statements of the business. Buyers generally are going to want to see your tax returns and financial statements dating back 3-5 years. A sophisticated buyer is going to assess your business's financials with great care, so it is a good idea to put forward a clean snapshot of your business at the outset. You also should consider evaluating your financials to be able to demonstrate to a potential buyer what costs are included on your financials that are personal to you (for example, potentially-excessive salaries, perks, rental payments to family-owned entities, etc.) and would be eliminated by a third-party buyer.

5. Digitalize your key information. In today's world, business transactions and negotiations are done electronically. The buyer, seller, and their respective professionals inevitably will be sending emails to one another requesting to see certain information, or they will require such information to be uploaded to some sort of cloud-based source such as Dropbox. Locate your key contracts with vendors, lessors, and customers and scan them into your computer. Once these contracts are digitalized, then they can be disseminated at a moment's notice. Your buyer will need to review these key contracts, and depending on the structure of your transaction, they may want to assume the contract (asset sale) or cancel the contract once the term expires (stock sale). You will also want to certify that that your key contracts are assignable to the buyer and to verify you own all of the intellectual property used in your business.

Conclusion

As much as you work ***in*** your business on a daily basis, you should work ***on*** your business and begin with the end in mind. "Getting your house in order" today will position your business for the future so that when the time comes for you to exit your business you will have the ability to maintain your business without too much interruption and will have the ability to focus your energy on structuring a great financial transaction for you and your family.

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