

Estate Planning Update

December 2015

The following is a brief summary of some estate planning developments and opportunities that may be of interest to you. We hope you find this helpful and look forward to hearing from you with any questions.

DAY PITNEY EXPANDS INTO FLORIDA THROUGH MERGER WITH CHAPIN, BALLERANO & CHESLACK

Day Pitney will expand its East Coast presence through a merger with Florida-based law firm Chapin, Ballerano & Cheslack. James A. Ballerano Jr., Brian Cheslack, Robert Chapin, Stanley Greene, Jay L. Kauffman, Jay D. Mussman and Brian E. Thompson will join the firm's Trusts and Estates and Corporate practices once the merger is completed on January 1, 2016.

The seven attorneys joining Day Pitney have experience in trust and estate planning, trust and estate administration, guardianships, probate litigation and elder law, as well as in corporate, real estate and business transactions. The lawyers will work out of their existing Florida offices in Delray Beach and Boca Raton.

Following the merger, Day Pitney's Trusts and Estates practice will have nearly 60 attorneys, making it one of the largest and most sophisticated trusts and estates practices in the country. For more than a decade, Day Pitney and Chapin, Ballerano & Cheslack have had an informal relationship, each providing legal services to clients with interests in the other firm's practice regions. We look forward to welcoming our

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new colleagues when we open our doors in Florida in January.

2016 INFLATION ADJUSTMENTS

Each year, certain estate, gift and generation-skipping transfer (GST) tax figures are subject to inflation adjustments. For 2016, the annual exclusion amount for gifts remains at \$14,000. The estate, gift and GST tax exemption amount for estates of decedents dying in 2016 and gifts made in 2016 is increased to \$5.45 million. The annual exclusion amount for gifts made to a noncitizen spouse in 2016 is increased to \$148,000.

The New York estate tax exemption, which applies to New York residents and those who own real property located in New York, is also subject to annual adjustment for the next several years. The New York estate tax exemption will increase to \$4,187,500 for decedents dying on or after April 1, 2016, through March 31, 2017.

FAMILY BUSINESS SUCCESSION AND TRANSFER: PREPARING FOR TRANSITION

After building and sustaining a family business through countless hours of hard work and years of emotional and financial commitment to its success, many business owners neglect to plan and prepare adequately for how they are going to transition the legacy they have created. Far too often, business owners are all-consumed with the immediate needs of the business and implementation of near-term operational changes or growth initiatives, without giving proper consideration to planning for their own transition out of the business. Here are some considerations and suggestions for planning the successful transition of a family business.

Plan Early

Early planning for the succession or sale of the family business, and frequent reconsideration of those plans to account for unexpected familial, economic or industry changes, significantly increase the likelihood that the transition of the business will achieve the exiting owner's objectives. Given the many complexities involved, planning well in advance of a transition event is critical regardless of whether the intent is to sell the business or pass it along either to members of the next generation or to management. Business owners should begin the planning process at least several years before the earliest point they envision exiting the business to ensure they give themselves sufficient time to analyze their options, determine their desired course and implement the appropriate estate and tax planning strategies to maximize the economic benefits of the transition.

Estate and Tax Planning

Succession planning and estate planning are not synonymous, but they must be in sync with one another to ensure the objectives of both are achieved. The owner of a family business can use a number of estate planning and tax mitigation strategies to provide for a tax-efficient transition of ownership. Implementing these techniques early and not waiting until a transaction is imminent (such as the acceptance of an offer for the sale of the business) will expand the owner's options and the potential benefits for the owner and his or her family members. These planning techniques include straight gifts to family members (or trusts for their benefit) as well as more sophisticated wealth-appreciating shifting strategies such as grantor retained annuity trusts (GRATs) and sales to grantor trusts.

Positioning for Sale

Owners who are thinking about selling the family business should understand it typically takes at least one to two years to position the company as "transaction ready." To position a company for sale, owners will want to make sure mission-critical contracts are in order, organizational documents are in shape, key employee arrangements are in place and financial records are sound. For example, most buyers will insist on receiving several years of certified or audited financial documents for the business. Also, to maximize the value of the business in a sale, it may be advisable to bring in outside management or other professionals to identify improvements and recommend changes to be made to the business, which may take a year or more to implement.

Prepare for the Unexpected

Even if the owner has decided to pass the business on to family members or management and has identified the specific individuals who will take over, it is advisable to have contingency plans in place. Unanticipated life events or changes in the financial conditions or prospects of the business may make the anticipated transition unviable. To address these contingencies, it is important to consider alternate successors in advance and to be prepared to transition the business earlier than anticipated (either through accelerated succession or pursuit of an opportunistic sale). Despite the best of plans, life and economic realities sometimes disrupt the business owner's path (both positively and negatively), so it is important to have a transition plan that is flexible and adaptive. Especially in the current M&A market, very attractive unsolicited offers to sell may come in, and if business owners and their businesses are not adequately prepared to move quickly, they might lose tremendous wealth opportunities.

Next Generation

Identifying which members of the next generation should succeed the existing family business owner can be a difficult and emotional process and, if not handled deftly, could lead to significant family strife. In many cases, the children of business owners may not be interested in running the business or may lack the requisite skills or drive to carry the business forward. In those situations, selling the business to non-family member employees or to a financial sponsor or strategic buyer may be the

only appropriate alternatives. If transitioning the business to the next generation is viable, the business owner should consider what roles and responsibilities are best-suited for each participating family member-owner. It is not advisable for the exiting owner to simply divvy up the ownership among the next generation without also defining their respective roles and setting forth the governance road map for the business after the transition has occurred.

Non-Family Members

It is critically important not only to consider family members in succession planning, but also to keep in mind the interests of business partners and key employees. Not only might these individuals be the most logical parties to carry on the business once the owner exits, but there may be buy-sell agreements or other equity ownership arrangements in place that need to be addressed and provided for in any transition of ownership to family members. A business owner who is contemplating a sale to a third party should consider establishing an equity ownership or phantom equity program to retain, incentivize and reward key employees for their contributions to the success of the business and assistance in consummating a sale.

Open Communication

Involving family members and key employees early in the transition planning process and openly communicating the succession plan to them increase the likelihood of a smooth implementation. While the business owner is still active in the business, he or she

should encourage discussion among the next generation about governance of the business going forward. Establishing a collective set of goals and objectives among family members for the future of the business and reducing them to writing will better position the business for success after the owner has exited.

It is vital for all family business owners to devote appropriate time and resources to succession planning well in advance of an anticipated retirement or sale, especially for the large percentage of businesses controlled by baby boomers, to best position the business to carry out the owner's intentions and to take advantage of opportunities as they arise.

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