November 2015
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Keys to Navigating the Buy/Sell Highway
Keeping the "success" in succession planning

Are you considering selling your business? If not now, a bit further down the road? Whether you are expecting a leisurely drive with the top down or a rally-car cliff hanger, some special insights can help you avoid wrong turns and dead ends.

WHAT'S MOTIVATING YOUR MOVE?

It is always better to have as the reason for your sale, thoughtful planning for the good of your family and employees rather than finding yourself on the dreaded "D List" (Disenfranchisement, Default on Debt, Divorce, Disability, or Death). Whatever the motivation, careful analysis of your circumstances, clarifying your transition goals, and engaging skilled advisors will enhance your potential for a successful succession.

EARLY TRIP PLANNING IS CRITICAL.

When anticipating a trip, just as you need to know road conditions and have navigation aids, the succession highway requires informed pre-planning —impromptu excursions can lead to unexpected results. If you start at the last minute, many of the resources and planning tools will no longer be available. Various types of trusts, gift giving, long-term purchase and sale agreements, deferred buyouts, and other mechanisms that can save you money and ease the burdens of the trip often cannot be capitalized on without advance planning.

POP THE HOOD & CHECK YOUR TIRE PRESSURE.

How prepared is your vehicle for this journey? As you head on down the road, are you hearing strange noises that suggest difficulties ahead? Do you have significant liabilities such as tax or employee matters? Can you safely make the buyer's requested representations and warranties? Are there any undesirable long-term contracts? Any third-party consents required? Have you taken care of personal items previously run through the business so that you can avoid add-backs required by the buyer?

ROAD WORK NEXT 10 MILES.

Having determined where you want to go and inspected your vehicle, now is a great time to inventory and review all of the governing documents for the business (e.g., Articles of Incorporation and other state public records, tax filings, Bylaws, Operating Agreements, and Buy-Sell Agreements), as well as any estate planning or other succession planning documents. If documents were drafted but never signed, add those to the stack for review and receive the benefit of any "hindsight" since the drafts were prepared.

Have you changed lawyers since important documents were drafted or signed? Make sure your current counsel has access to those files. It is a uniformly unpleasant and commonly expensive experience to be in the midst of a business sale (or owner divorce) and be faced with a claim from a former employee (or spouse) based on a signed document no one else remembers.

The focus of the succession contracts should be an orderly internal transition or sale to a third party. For example, what will trigger buyout rights? How much will be paid, when, and to whom? How will payment be secured? Would life or disability insurance help provide buyout liquidity and working capital during transition?

ARE WE THERE YET?

Gifting of ownership and related estate planning are best accomplished when transition is still hypothetical, and not immediately after signing the letter of intent to sell the business. Your best move is to start the discussion early and to involve your attorney, CPA, or other tax advisor, mergers & acquisitions intermediary, insurance advisor, banker, and wealth management planner.

HAPPYLAND: NEXT EXIT.

Although Confucius (551–479 BC) is widely credited with the following quote, our money is on Bill Murray (1950- AD): “And remember, no matter where you go, there you are.” So, why not get underway? Beep Beep.

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