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PASSING THE TORCH

PLANNING ISSUES IN THE BUSINESS SALE

David L. Keligian, JD, CPA, MBA

1. **GENERATIONAL TRANSFER ISSUES.** Leaving or selling a business to children is not a simple issue. There is more involved than legal, financial, and tax strategies. Basic issues.
 - 1.1 Procrastination.
 - 1.2 Do children have management capability?
 - 1.3 Do children have the *desire* to manage the business?
 - 1.4 Interpersonal dynamics (sibling rivalry, spouses, etc.).
 - 1.5 Business issues.
 - 1.5.1 Reaction of key customers.
 - 1.5.2 Reaction of key employees and potential loss of key personnel.
 - 1.5.3 Continued availability of bank and other forms of financing.
 - 1.6 Non-tax estate planning issues.
 - 1.6.1 Splitting the pie.
 - 1.6.2 Fair vs. rational - - business control issues.
 - 1.7 Transfer tax issues - - means and methods of transferring the business to minimize estate and gift taxes.
 - 1.7.1 Shift of business opportunities

1.7.2 Voting and non-voting stock.

1.7.3 Defective grantor trusts and other techniques.

2. **LONG RANGE SALES PLANNING**

2.1 Build management team.

2.2 Build business systems.

2.3 Managing business trends.

2.3.1 Sales.

2.3.2 Profits.

2.4 Document key contacts and agreements.

2.4.1 Ownership “deals”.

2.4.2 Key suppliers.

2.4.3 Key employees.

2.4.4 Leases.

2.4.5 License agreements and other intellectual property.

2.5 Common tax issues.

2.5.1 S elections if C corporation; appraisals to minimize built in gains taxes.

2.5.2 Residency questions.

3. **PRE-SALES PLANNING.**

3.1 Client education regarding process - - LOI, representations and warranties, etc.

3.2 Client needs to keep eye on business ball!

3.3 Client needs to anticipate reaction by competitors and key employees. Many times there is no way to avoid them.

3.3.1 Confidentiality agreements merely delay issues.

3.3.2 Use of non-solicitation, no-hire agreements.

3.4 Run the numbers - - tax projections, accounting issues, etc.

4. **INITIAL STEPS.**

4.1 Selling a business is like dating.

4.2 Pre-LOI and LOI stages are where the seller gets the most!

4.2.1 Advisors' role - - outline key points and how seller should ask for them.

4.2.2 Make preliminary negotiations "businessman to businessman".

4.2.3 The "lawyer rule".

4.3 Key "first item" issues.

4.3.1 Employment agreements.

4.3.2 Length of reps and warranties.

4.3.3 Caps and baskets.

4.3.4 Excluded assets.

4.3.5 Timing.

4.3.6 Role of children, key employees.

4.3.7 Non-compete carve outs.

5. **POST-SALE ISSUES.**

5.1 Time.

5.2 Investments.