

NJBIZ

ALL BUSINESS ♦ ALL NEW JERSEY

GUEST COLUMN

Transfer the Fruits of Your Hard Work Smoothly

There are a host of options to make sure your business ends up in the right hands

By Joseph Rowek

YOU HAVE INVESTED endless hours in your business. If something happened to you, how would your family be cared for?

The answer to that question lies within your business, your largest asset. First, you must determine its fate. You have two options: You can pass it on to the next generation or sell it. Not everyone has a family member lined up to take over, so you may decide to sell the business to a partner or other shareholder, to your employees or to an outside purchaser, such as a competitor.



Rowek

Perhaps a son or daughter may already be a principal member of the executive team, planning to make your business his or her life's work. If so, you must determine how your estate will be divided in order to leave your business to said child while still providing for your surviving spouse and other children who are not working in the business.

At this point, you will start considering whether to make outright gifts or apply some gifting strategies to leverage the tax-exempt portion of transfers. There are

leveraging strategies using valuation discounts available for minority or other noncontrolling interests. Typical wealth-shifting strategies include a Grantor Retained Annuity Trust ("GRAT"), a sale of a business interest to a Grantor Deemed Owned Trust ("GDOT") or a private annuity.

Briefly, assets are transferred to a GRAT in exchange for an annuity for a fixed term of years after which the assets go to or for the benefit of your heirs. On the other hand, a sale to a GDOT involves a transfer of assets to a trust usually in exchange for a note for a term of years with a fixed rate of interest. The note is usually interest-only with a balloon payment at the end of the term. The assets remaining in the trust after the note is paid off continue for the benefit of the heirs.

With a private annuity, assets are sold to an individual or a trust in exchange for an annuity, usually for the life of the seller. Here, the purchaser of the assets is obligated to make annuity payments for the life of the person selling the assets.

Although the above descriptions are brief, you should understand that each is a wealth-shifting strategy designed to transfer future appreciation in an asset to your descendants at little or no transfer-tax cost. Whether any particular strategy is appropriate depends on your objectives, the

structure of each strategy and a thorough analysis of the tax and nontax advantages and disadvantages of each.

What if you share the ownership of your business with other partners or shareholders? In this case, it is especially important to have a plan in place. For instance, should one owner die, the surviving owner now is working not only for himself, but for the family of the deceased owner as well. Problems could easily arise over disagreements on the direction of the business.

A Buy-Sell Agreement could help prevent conflict. However, even if an agreement is in place that provides for a buyout and sets a purchase price, there could still be problems if liquidity for the buyout has not been provided for. To eliminate this risk, life insurance or some type of sinking fund should be considered to pay off the family of the deceased partner immediately.

Another approach would be to liquidate some of your interest to take some money off the table. Here, a strategy known as an Employee Stock Ownership Plan (ESOP) could be used to essentially sell some of your interest to your employees. ♦

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