Cantwell & Goldman, P.A.

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Central Florida Law Reporter

Business Succession Planning - Sale or Succession?

The previous edition of this publication contained the first installment in a series of articles about small and mid-sized business succession planning. This installment focuses on the most important decision in any succession plan: whether a business owner should sell the business or choose a successor. This decision affects other important choices, including but not limited to, the corporate structure, how the business assets are held, business processes, and capital structure.

When making this decision, business owners should first consider their retirement goals and needs. A recent survey by CNBC and the Financial Planning Association (FPA) found that 78 percent of small business owners plan to sell their business to fund retirement. Another survey indicated that 70 percent of small business owners' wealth is tied up in their business with only 30 percent invested outside of their firms. If your financial independence is not secure without a lump sum payout from the sale of your business, and potential successors do not have the capital to pay fair value for your business, the decision to sell to a third party may be in your best interest.

Simultaneously, if your future financial security is not dependent on the sale of your business, you may want to consider succession planning among family members, or long-time employees, where their ownership options may vest over a longer period of time. This type of sale often involves a payment plan, or stock ownership plan. With this type of plan, an owner may take a more modest initial payment from the successor, in conjunction with structured payments in the future. This option presumes that there is a group of people, or at least one successor, who has the requisite skill set to take over the company. When making this decision, a business owner should consider the worst case scenario, however unlikely, that the company could fail and ultimately default on any unpaid obligations to the owner.

Ultimately, a business owner must weigh financial interests against other concerns when deciding what type of disposition is the best. Other considerations that weigh heavily in this decision include family members' expectations, the present state of the company, and whether the owner seeks to retain any ownership interest in the company.

Subsequent editions of this newsletter will discuss how to choose a successor, the implementation of a successful succession plan, passage of ownership, and optimal legal and financial structuring. The attorneys at Cantwell & Goldman, P.A. have years of experience in corporate law, corporate finance, estate planning, and real estate law, among many other practice areas. More information is available on our website, at www.hmtlaw.com. If you have questions concerning any information contained herein, please schedule a consultation with one of our knowledgeable attorneys.

Economic News: Housing Market Recovery in Florida

While Florida made headlines at the height of the economic downturn for suffering some of the greatest national declines in real estate values and transaction volumes, Florida's housing market has experienced marked improvement since then.

Data from the Florida Association of Realtors indicates an underlying trend of increased lending activity to traditional homebuyers. The latest available report indicates that in May 2015, 24,789 transactions for single-family homes occurred in Florida, representing a 7.7 percent year-over-year increase. Simultaneously, cash sales as a percentage of closed sales declined to 34.8 percent, representing a 16.5 percent decline on a year-over-year basis.

These figures are important in two respects, especially when viewed in conjunction with the simultaneous improvement in transactional prices. First and foremost, the decline in cash purchases combined with increased transactional volumes indicates that the improvement in the residential real estate market is not driven by investors, as it was in January and February 2013, when cash sales briefly represented over 50% of closed sales. Also, this is indicative of improved lending conditions for consumers, following the period of stricter post-recession lending standards.

Consumer Watch: Lending Scams

Even though lending conditions for consumers and investors have improved, many scam artists are still using lending scams to separate victims from their hard-earned money. A common loan scam is the "advanced fee" scam. Scam artists will charge up-front fees for insurance, processing, or paperwork. Any of these fees, charged in advance should be cues for a potential victim to walk away. While legitimate lenders will charge an application or credit report fees, these are usually nominal and paid to the lender upon the closing of the loan.

Another warning sign is a "lender" that wants your personal information, such as your social security or bank account number, but says that they will not check your credit score. The Federal Trade Commission reminds consumers that "legitimate lenders never 'guarantee' or say that you are likely to get a loan or a credit card before you apply, especially if you have bad credit, no credit, or a bankruptcy."

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