Transferring the family newspaper to the next generation

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One of the most important decision facing owners of a family newspaper, as with many closely held concerns, is how to assure its continued existence.

A critical question is whether the next generation is prepared to take hold of the management reins. A transfer of management responsibility is certainly not an instantaneous occurrence. It must be a gradual process involving the incremental introduction of different segments of the operation with concurrent additions to responsibilities over the enterprise.

One of the most important aspects of this process is that senior family members must be able to accurately appraise the abilities of the heirs apparent. The members of the generation being groomed to assume the enterprise must be able to grasp their own individual strengths and weaknesses and accept that often they will each be working at different levels of responsibility—with corresponding rates of compensation.

Family business advisors can provide invaluable guidance to their clients through personalized consulting, as well as via workshops, forums and retreats to assist in the transition.

A logical starting point for passing the business to the next generation is to begin a process of transferring ownership, while retaining management control. Historically, family newspaper businesses have been operated using the corporate form. Many of these corporations have elected to be taxed under Subchapter S of the Internal Revenue Code, in order to take advantage of the opportunity for pass-through tax treatment.

Although S corporations are generally precluded from having multiple classes of ownership interests—which might lead one to think there is little ability to maintain control by one shareholder—S corporations may have voting and non-voting stock—as long as all shares participate proportionately in distributions.

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Voting and non-voting classes of stock can be created by simply filing an amended certificate of incorporation with the governing jurisdiction's secretary of state. Thereafter, senior generation members can make gifts

of non-voting shares to younger family members while retaining control. Senior family members can be assured that the transferred shares will continue to inure to the benefit of their descendants devoid of outside interference by adopting a shareholders' agreement that restricts the transfer of shares to an approved class of shareholders—typically restricted to lineal descendants, or certain types of trusts for their benefit. If the business entity is a partnership or a limited liability company, similar results can be achieved through the adoption of restrictions in the entity's partnership agreement or operating agreement.

Another issue that often must be addressed is whether ownership should be distributed equally among members of the next generation, regardless of whether they are all employed in the business. There have been many articles in the press over the years about dynastic family holdings in newspaper companies. Often, the ideal approach would be to have ownership pass only to those family members who are employed by and working in the business—if there are other assets available to make equalizing transfers to descendants who are not involved in the enterprise.

Finally, senior family members will need to determine the methods and techniques they will employ to transfer valuable business interests. There are many sophisticated and effective ways to leverage the amount that can pass free of estate or gift tax.

Each year, a senior family member can give tax-free interests in the business worth $14,000 (for 2013) to each member of the next generation. In 2012, a total of $5.1 million can be gifted without incurring any gift tax. The amount for future years depends upon congressional action, expected sometime before or after Dec. 31, 2012.

These gifts can be made to trusts that are designed to last for many generations, which can save future transfer taxes and prevent interests in the business from claims of creditors and divorcing spouses. Whatever course the senior members decide to take, the one common thread is the earlier they begin a gifting and business transfer plan, the more effective and efficient it will be.

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PLANNING: Approach problem united

FROM PAGE 9

some banks, and through some consulting firms. These programs are useful for the information they impart and, perhaps more important, for the conversations they may engender.

Finding ways to build flexibility into wealth transfer plans may seem like a contradiction in terms, since tax planning requires many of these decisions to be permanent. Some flexibility, however, can be helpful if there is an intent to adapt the plans to changing circumstance. One strategy is to create an option for beneficiaries to change trustees. Although the trusts themselves will remain intact, new trustees can carry out the trust creator's wishes while balancing greater familiarity and comfort with the beneficiaries who have selected them.

When family members are concerned about a lack of communication by wealth creators about wealth transfer plans, it is best to approach the problem in a united manner. One or two children acting separately may be perceived as promoting a selfish agenda. However, a family member or group of family representatives can be successful in implementing some of the strategies I mention above.

Some people may view direct communication about these issues as tantamount to opening Pandora's box or as having the potential to derail a wealth creator's plans. One the contrary, by avoiding planning in a vacuum, families make it easier to dispel ambiguity and bring clarity, unity and viability to an often-confusing task. © Family Business Magazine 2012

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