Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Balancing the Family Interests in Succession Planning: A Case Study

Nearly 20 years ago, Reinhart Boerner Van Deuren s.c. had the opportunity to counsel a family-owned company involved in the early stages of building a family legacy. Faced with the challenges inherent to young businesses, the family patriarch sought Reinhart's assistance in planning for a promising future.

At the time when Reinhart began working with the Company, the business owners consisted of the patriarch and his wife. The couple had six children; however, none of them were old enough to participate in the business at the time, and it was impossible to forecast if the next generation would ever join the business. Uncertain of what the future held for the family business, the owners recognized the value of planning for potential growth and the succession of the business. As is often the case in designing many succession plans, we began the process by evaluating the needs of the parents. Given the young age of the children, it was important to start by making sure the parents had an estate plan in place that included a business continuation plan and mechanisms to protect against unforeseen disruptions such as a death or incapacity of one or both parents. We understood that the plan needed to be flexible to accommodate future planning, but it was important to make sure that the senior generation's estate plan was firmly established.

After updating the parents' estate plan, we then identified opportunities for them to transfer ownership interests to their children. Given the children's young ages, the parents were not ready to transfer control of the business to them; therefore, the Company was recapitalized to create shares of voting and nonvoting stock. The nonvoting stock would be used as a vehicle to transfer interests to the children with the reliance upon simple gifting programs to take advantage of the annual gift exemptions. The gifting was accomplished by making contributions of stock to trusts that were set up for the children, which had the added value of providing creditor protection.

As the years passed, the Company continued its growth pattern, the children entered adulthood, and two of the six children entered the family business. Managing a family business can be difficult in and of itself; however, it becomes more complex when it consists of active and nonactive family members. To address changing family dynamics, the parents needed to adjust their long-term plan to fairly balance the financial interests among the active and nonactive children. To meet the new long-term goals, Reinhart assisted the parents by reviewing the business' existing governing documents and agreements, allocating the power to exercise voting rights, forming a governing board, determining who had the power and responsibility to run the day-to-day business affairs, and creating a plan for a possible exit from the business. A shareholder agreement was developed to function as the foundation for transferring further interests in the Company while simultaneously accommodating the needs and wants of the parents and the active and nonactive children.

As the Company grew, the parents explored various ways to transfer further appreciation in the business to the next generation. The Reinhart team was able to assist the parents in implementing structures to allow them to move growth outside of their estate while maintaining control of the Company. These estate freeze techniques included intentionally defective grantor trusts and grantor retained annuity trusts designed to accommodate the active and nonactive children. The active children became beneficiaries of certain trusts - allowing them to eventually control the future direction of the Company. The nonactive children, on the other hand, became beneficiaries of certain trusts that provided them with some of the economic benefits reaped from the growth of the Company. This was accomplished by transferring interests in real estate to the nonactive children and interests in the operating business to the active children. Over the course of a few years, the parents successfully transferred nearly two-thirds of the value of the business to their children.

With a solid foundation in place, the family eventually decided to pursue a sale of the business. The Reinhart team assisted the family in a comprehensive process to attract multiple bids from both strategic and financial buyers. An investment banking firm and management team collaborated with Reinhart to close a transaction that netted the family well over $200 million. The sizeable transaction provided each of the family members with liquidity and the ability to develop their own legacy. Following the sale, the active members continued to work with the Company for a period of time; however, their entrepreneurial spirit allowed them to move onto other ventures. Reinhart's strategic planning accommodated not only the parents but all of their children, and while they encountered numerous complexities in passing on their business, Reinhart devised a strategy that took into account all family members. As the result of successful long-term planning, we have reached the moment where it is now time for the children to prepare for the next generation.

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