YOU BUILT IT,
DON'T THROW IT AWAY!

Would you knowingly throw away hundreds of thousands dollars (or more)? Would you be willing, without compensation, to walk away from a business that you've spent years building? That's precisely what happens when small business owners fail to implement a viable exit strategy for themselves. Business owners need to plan for the future of their businesses by implementing an exit strategy that addresses what happens in the event that the owner dies, retires, or desires to discontinue his involvement in the current business.

EFFECT OF FAILING TO IMPLEMENT AN EXIT STRATEGY

If a business owner waits to implement an exit strategy until retirement or if he dies prior to the implementation of an exit strategy, it may be too late for the owner, or his heirs, as the case may be, to realize any tangible financial benefit from the business. If an exit strategy is not implemented, then upon the death of the business owner, the owner's heirs will succeed to the business. While this may not seem to be an undesirable outcome, it could prove to be disastrous to the business and cumbersome for the family. For example, if Dr. Jones, the owner of a dental practice dies, his estate would become the owner of the practice. Thus, assuming that none of his heirs are dentists, the practice would either have to be sold at a "fire" sale or it would be wound down. In either event, the grieving family members are not going to be in a position to address these situations. If Dr. Jones retires prior to locating a buyer, he will end up merely shutting the doors to the practice, terminating his staff, and forcing his patients to locate a new dentist. The end result is that Dr. Jones would end up walking away from what could have been a significant asset. Therefore, it makes a great deal of sense to plan for the future by implementing an exit strategy.

SELECTING AN EXIT STRATEGY

A business owner's exit strategy should be developed by ascertaining his goals. For example:

- how quickly does he wish to effectuate the sale;
- is he going to retire or does he wish to start another business after selling this one;
- does he wish to remain involved in the business after the sale;
- is there a viable market for the business;
- what type of buyer is most likely to want to purchase the business;
- is there a need to "groom" a successor; and
- is the sale going to take place over time?

All of the foregoing issues should be carefully evaluated by the owner and his advisors before selecting an exit strategy. That said, and though there are other options, most business owners either: (a) identify key employees to succeed to the operation and ownership of the business (i.e., succession planning) or (b) sell the business outright to a third party.

SUCCESSION PLANNING (INTERNAL SALE)
In order to sell the business internally, the business owner must hire competent successors to replace him. In our example above, Dr. Jones would hire one or more associate dentists that would eventually buy Dr. Jones interest in the practice. Typically, a shareholders or operating agreement with buy-sell provisions would be entered into by the selling owner and the buyer(s), which document should contain provisions that establish or set forth:

- the timing of the sale of the business;
- the method for determining the sales price;
- payment terms; and
- Dr. Jones post-sale rights and obligations, i.e., deferred compensation, continued employment, consulting arrangement.

THIRD PARTY SALE (EXTERNAL SALE)
The biggest impediment most business owners have to selling their business to a third party is finding a buyer. While it's possible for the business owner to identify a competitor that may be interested in acquiring the business, it's not always a viable option. A business owner may not want to share his intent to retire with his competitors as those competitors may elect not to acquire the business, but instead may wait until he has retired to "raid" the employees and customers/patients of the now-defunct business. A business broker that specializes in selling the type of business operated by the owner should be engaged to facilitate a discrete sale of the business. The next step is for the business owner, along with his accountant and legal advisors, to determine whether the assets of the business or the business owner's stock or membership interest should be sold. An additional consideration, just as with an internal sale, is whether the owner is going to remain employed or otherwise engaged by the new owner.

CONCLUSION
Developing an effective exit strategy can provide a business owner with a significant financial reward in exchange for his years of hard work in developing the business. Conversely, failing to implement an exit strategy can, at a minimum, lead to the business owner leaving money on the table, or worse, leaving his family in an uncomfortable position of having to wind down the affairs of a business that they are unfamiliar with.

If you would like assistance implementing an exit strategy, please contact Michael S. Gottlieb, Esquire at (301) 795-9075 or mgottlieb@apatoffpeters.com.