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# THE Advisor

INFORMATION TO TRUST; EXPERTS TO RELY UPON

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## Exit Planning – How To Run Your Business So You Can Leave It In Style

REDGRAVE & ROSENTHAL LLP

All business owners will eventually leave their business—voluntarily or otherwise.

The key is to leave on your own terms—by providing yourself and your family with the maximum amount of money necessary to accomplish personal, financial and estate planning goals.

### CONSIDER THIS SCENARIO:

*Years ago, I met with the two owners of a thriving construction company. What I assumed would be a typical year-end business review instead turned out to be a “We’re getting out of the business; how do we do it?” meeting. Despite all of their success, they were tired of the government regulations, changing tax codes and day-to-day grind of running a multi-million dollar company.*

*So we discussed their options. A sale to a third party was not an option because the owners were not willing to stay on after a sale and they had failed to develop a strong management team which any savvy purchaser would require as a condition of purchasing the company. Transferring ownership to a group of key employees or a family member was also out of the question. None had been groomed to take on this type of responsibility and nothing had been done to fund this type of buy out.*

*Ultimately, their only option was to liquidate — at auction prices.*

*This highly-profitable company had little worth beyond the “fire-sale” value of its tangible assets. After the sale of those assets, dozens of employees lost their jobs, the business disappeared and the owners left millions of dollars on the table.\**

### ASK YOURSELF THESE QUESTIONS:

- Do you know your exact retirement goals and what it will take—in cash—to reach them?
- Do you know how much your business is worth today, in cash?
- Do you have a written plan in place to promote the value of your business and to secure key employees?
- When the time comes to transfer the business to a family member, insider, or third party, do you have a plan to maximize profits and minimize tax liability?
- Do you have contingency plans in place to protect your wealth, provide for your family and ensure business continuity?

While some of these questions may seem deceptively simple, being able to answer these questions with clarity often requires thorough planning.

### WHY EXIT PLANNING?

According to the Small Business Administration, a majority of closely-held businesses will change hands within the next five years. Surprisingly, most business owners have simply not planned for such a transition. When this occurs, business owners need a concrete plan to maximize business value and address individual priorities.

### OUR APPROACH

At Redgrave & Rosenthal LLP, our first priority is always our relationship with our clients. In that regard, we are zealous advocates of our client’s best interests, and we strive to provide the finest in personalized legal services at reasonable prices.

Although the interdisciplinary nature of exit planning is a relatively new practice, the financial and legal principles behind it are well established. The exit planning advisors at Redgrave & Rosenthal LLP have over 50 years combined experience in business and estate planning and are well prepared to educate and guide clients through this important process.

Arthur R. Redgrave established his practice in South Florida in 1981 and his dedication to personal client service remains the guiding principle of the firm. He is Board Certified in Wills, Trusts and Estates and has received the highest rating (AV) for legal ability and ethical standards from Martindale-Hubbell. Arthur’s years of experience uniquely qualify him to provide counsel to clients on complex matters where law, tax and finance intersect.

Gerald “Jerry” W. Gritter is another member of the exit planning advisory team. Jerry has over twenty-five years of experience advising clients on business, corporate and securities matters and is particularly qualified to assist business clients from start-up to sale. For a further introduction to Jerry, please see the reverse side of this newsletter.

### HOW TO RUN YOUR BUSINESS SO YOU CAN LEAVE IT IN STYLE

Exit planning is a collaborative process focused on the client’s objectives. We work with the client’s existing advisors to develop a comprehensive strategy to achieve the client’s goals.

### SEVEN STEPS TO THE EXIT PLANNING PROCESS

1. Set Objectives: Exit planning is based on the business owner’s goals. Therefore, the first and most important step is to identify your objectives and determine the financial structure necessary to achieve such objectives. Depending on your goals, the remaining steps of the exit planning process can be prioritized accordingly.

2. Determine Value: Alternative valuation techniques allow us to maximize the value of your business and minimize the tax implications.
3. Preserve/Protect/Promote Value: Implement a proven method to secure key employees and enhance the value of your business.
4. Convert Value to Cash: Depending on your ultimate objectives, transfer the business to a third party.
5. Sell for a Note: Arrange a structured transaction to transfer the business to a family member, key employee or designated successor.
6. Contingency Planning: Establish a plan to provide for your family in case of disability and/or death and ensure business continuity.
7. Asset Protection and Estate Planning: After you have determined your objective, this is often the next highest priority. Your existing estate plan should be reviewed to ensure consistency with the exit planning objectives. Proactive measures should be undertaken to protect assets from creditors and preserve wealth for future generations.

### THE EXIT PLANNING REVIEW

Would you like to learn more about exit planning? Sign up for our e-newsletter, *The Exit Planning Review*, for analysis and discussion of the details of the exit planning process. Send an e-mail to [Rredgrave@boca-law.com](mailto:Rredgrave@boca-law.com) or contact our office to receive this complimentary and informative newsletter.

### JOIN US FOR AN EXECUTIVE BRIEFING

Register for our next Executive Briefing to learn more about exit planning. This complimentary one-hour session is an informative and interactive presentation on the exit planning process. We believe this information is of timely importance to business owners. If you have a trusted advisor with whom you already work in a similar capacity, please invite that advisor as well. Send an e-mail to [Rredgrave@boca-law.com](mailto:Rredgrave@boca-law.com) or contact our office to register for the next briefing.

\* Excerpted from the definitive book on exit planning, *How To Run Your Business So You Can Leave It In Style*, by John H. Brown. Send an e-mail to [Rredgrave@boca-law.com](mailto:Rredgrave@boca-law.com) or contact our office to learn how you can receive a complimentary copy of this book.

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## The Life Lover Foundation



Sharon Parker, cancer survivor and client of the firm, has worked with our office to establish a foundation to fund cancer research. The Life Lover Foundation, a not-for-profit charitable organization, was named after Sharon's personal cancer-fighting mantra emphasizing her love of life. It was created to further the search to find a cure for all types of the disease.

Diagnosed with Hodgkin's disease and thyroid cancer, Sharon utilized positive thinking and forefront treatment options to emerge as a one-woman support group for current cancer patients and their families. She has written a patient-to-patient book entitled *Look Out Cancer...Here I Come* (available in late April) which provides honest insight into the daily personal battles of treatment.

The goal of the Life Lover Foundation is to foster an international effort amongst all molecular researchers, so that information can be shared and innovative cures discovered. One hundred percent of all donations and proceeds from the book will go to the foundation, which will in turn award grants for research. Such grants will be given to individuals who are actively engaged in cancer research but who have been unable to obtain funding from large private firms such as the National Institute of Health.

For further information on the foundation, book, or to make a donation, please visit: [www.lifeloverfoundation.org](http://www.lifeloverfoundation.org)

## Spotlight on Jerry Gritter



Gerald W. "Jerry" Gritter has over twenty-five years of experience in providing legal counsel to both public and private companies in corporate, business and securities matters. He advises business enterprises in a broad array of matters, including choice of entity, ownership and management structure, financing arrangements, initial and subsequent securities offerings (both public and private), mergers and acquisitions, joint venture arrangements, regulatory compliance, contractual matters and exit planning.

Jerry has had notably broad experience representing companies in the auto distribution industry and representing both automobile dealers and auto finance companies.

After spending over 20 years in a large firm corporate practice, where Jerry became Chairman of the Corporate and Securities Practice Group, he now enjoys applying that experience in a boutique firm setting, as Of Counsel to our firm. Because of his years of experience representing start-up and fledgling enterprises, Jerry is able to advise his clients with a long term perspective, and works hard to prepare clients in advance for the legal issues they may face.

Jerry is a graduate of Calvin College, in Grand Rapids, Michigan, and the University of Michigan law school. He has been practicing in South Florida since 1979 and has received the highest rating for legal ability and ethical standards (AV rated) from Martindale-Hubbell.

## Estate Planning for Fido



In the United States, over 43 million households have dogs and 37 million households have cats. Since many people consider their pets to be members of their family, it is not surprising that pets have become a focus of our individual estate and financial planning. As an example, Doris Duke, sole heiress to Baron Buck Duke, founder of the American Tobacco Company, reportedly left \$100,000.00 in trust for the benefit of her dog.

Twenty-eight states authorize estate planning for pets with some form of a "pet trust." In Florida, pet trusts are specifically authorized by statute. A pet trust is a legal document that is created by the pet owner during the owner's lifetime to provide for the care of an animal until its death, or as otherwise directed by the terms of the trust. In establishing such a trust, there are several factors for an owner to consider. The purpose of this article is to provide you with some of the factors that you should keep in mind if you are considering setting up a trust for your beloved pet.

### DESIGNATE A CAREGIVER

The pet owner should thoughtfully designate an individual who will care for the pet in the event of the owner's death or disability. Alternate caregivers should be named in case the primary individual appointed is unable or unwilling to serve in that capacity.

### DETERMINE THE AMOUNT OF THE TRUST

The pet owner should determine the amount of funds necessary to be distributed to

the pet trust. The caregiver will have the responsibility of housing the pet, as well as providing food, boarding, grooming and veterinary services, including handling any long-term illness. Each of these factors should be considered when estimating your pet's future financial needs. The pet owner may provide detailed instructions with regard to any one aspect of the pet's care or the pet owner may leave the standard of care to the caregiver's discretion.

### DESIGNATE A TRUSTEE

The pet owner should designate a trustee for the trust. The trustee will administer the property in the trust for the benefit of the animal. The caregiver may be named to serve in this dual capacity or the pet owner may select a separate individual or trust company to handle the trust administration. The pet owner should name alternate trustees who can serve until the trust terminates.

### PROVIDE BURIAL INSTRUCTIONS FOR YOUR PET

The pet owner should provide written instructions in the trust document as to the pet owner's wishes for the ultimate disposition of the pet.

### DESIGNATE A RESIDUARY BENEFICIARY OF THE TRUST

The pet owner should specify a remainder beneficiary of the trust for any funds remaining after the pet's death.

If you are interested in setting up a trust for your pet, please contact our office to schedule an appointment. We will help you incorporate your pet planning goals into your overall estate plan.

## Pay Now or Pay Later:

## The Pitfalls of Hiring Private Duty Care

As we age, our ability to perform basic daily activities diminishes. Professionals divide these activities into two categories: Instrumental Activities of Daily Living, including cooking, housekeeping, laundry, driving and shopping; and Activities of Daily Living, including bathing, dressing, walking or transferring, toiletry, and medication management. Sometimes a family member is able to assist, but more often than not, a home health aide must be hired.

Families frequently turn to the recommendations of neighbors and friends in looking for in-home care. This often leads to hiring privately rather than through an agency. The main reason for hiring privately is cost; private aides charge substantially less than an agency. Unfortunately, consideration is not given to the many hazards that come with paying someone privately (usually with cash) to perform such services. Some problems which may be encountered include tax consequences, workers' compensation, liability, abuse and exploitation, and the marriage trap.

As the employer of a private duty aide, you are required to pay Social Security, unemployment and payroll taxes. If the aide is to be considered an independent contractor, it is crucial to consult with both an attorney and an accountant to ensure that the aide meets the criteria for independent contractor status under Internal Revenue Service guidelines. The consequences of the aide not being deemed an independent contractor can be severe, including liability for back taxes, as well as civil and criminal penalties. Many assume the risk and think no one will ever know. However, once the aide files for unemployment after your loved one passes away, a Pandora's box of legal troubles is opened.

Moreover, as the employer, you can be held personally liable for the costs of any work-related injury to the private duty aide. This may include medical expenses and disability payments. Such injuries are quite common in the area of home health care, since duties tend to include lifting and transferring the patient.

When a private duty aide is hired, based on the referral of a neighbor or friend, a comprehensive background check is rarely completed. While a background check does not eliminate the potential for abuse or exploitation, it can minimize the risk. Aides often care for our loved ones with little or no supervision. Many family members live far away, have substantial responsibilities that prevent them from providing the supervision, or simply do not know how to recognize signs of abuse. These circumstances provide the aides with an opportunity to ingratiate themselves with the individual and may cause the individual to feel obligated or dependent on the aides. This sense of obligation and dependence can lead to unexplained withdrawals from bank or brokerage accounts. If an aide was hired through an agency, recourse is available. The odds of recovery from a private aide are slim.

An extension of abuse and exploitation is the "marriage trap." Some private aides provide a level of companionship that has been missing from our loved ones' lives, usually since the death of spouse. Such companionship can lead loved ones to believe that they cannot live without the aide and create a sense of duty and obligation to provide for the aide. The loved one rarely comprehends the consequences of marrying the aide. It is much more than survivor benefits from Social Security or a pension. Under Florida Law, a surviving spouse may be able to claim a substantial portion of the loved one's estate, even if it is contrary to his or her estate plan.

Some private aides are the most loving, caring individuals. Unfortunately, without supervision and regulation from an agency, the risk to our loved ones and our families financially, emotionally and psychologically, can be quite high. All of the aforementioned consequences should be considered and discussed in great detail prior to employing a home health aide. Please contact us to discuss these risks and help protect you and your loved ones.