

PLANNING FOR SUCCESSION - ARE YOU READY?

MICHAEL KLATT



Family members often hold hotel businesses for many years. The businesses can be built up to become very valuable assets.

It is vitally important for all business owners, including hoteliers, to obtain proper advice on how they should provide for the future and to document plans accordingly.

Hotel businesses range in size and the way they are owned. Some hotels are owned by individuals, others by multiple stakeholders/owners individually and some through structures such as companies or trusts. Every hotel business however, needs a business succession plan. The plan needs to deal with the operation and ownership of the business when stakeholders/owners or other key people leave through illness, accident or death, or if a stakeholder or owner simply wishes to retire.

Some hotel businesses are also family businesses where multiple members of a family are involved in the ownership or operation of the business. A husband and wife may own the business and wish to pass on the business to one or more of their children. If this is the case the first question to ask is do the children want to own the business and if so, will the business be successful if the children own the business? If there is more than one child being contemplated for an ownership interest are they able to work together to successfully run the business or will their relationship ultimately become detrimental to the business? Perhaps it's

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possible to ensure that there are certain key people involved in the business to give the stakeholders/owners the support necessary to ensure that the business continues successfully. Sometimes a sale or part sale of a business may be a better choice and provide the most wealth to be passed to family. Businesses that have stakeholders/owners from different families have their own complex succession issues to be addressed. Whether the interest in the business is held personally, by a company or by a family trust there would

normally be one key person from a particular family involved. The other stakeholders/owners may be reluctant to see a wife or children of that key person who leaves through illness, accident or death becoming involved in the business. These issues can be addressed by way of agreement. These agreements include partnership agreements, unitholders agreements (where the ownership is held through a unit trust) or shareholders agreements (where the ownership is



held through shares in a company). These agreements will state clearly the rights of the stakeholders/owners in the event of illness, accident or death. Sometimes the business funds insurance policies and the insurance proceeds are used to pay out the stakeholder/owner or their family. Other times a business might be in a position to borrow to payout a departing owner or there may be agreement to payout the stakeholder/owners' entitlements by instalments over an agreed period of time. Agreements typically restrict who may become an owner or stakeholder in the business.

It is also important to ensure that, in the case of an unforeseen illness affecting persons operating the business, documentation and arrangements are in place so that the business assets are not frozen and that the business can continue to trade. Power of attorney documents can be prepared to deal with this.

Many businesses have addressed these issues and have a good business succession plan in place that has been developed with the assistance of trusted advisors.

Please contact us if you wish to do some Estate Planning or review your will.

Walk Softly – And Carry A Big Stick

MARK MADSEN & CHRIS HARGREAVES



Much time, dedication and at times capital is required for licensees to develop high standard venues and maintain a hard-earned reputation. However, it is an unfortunate truth that sometimes things do not go the way we plan.

With the media onslaught against both the hospitality industry and the regulator alike, the pressure on licensees has never been more intense. Many influences can have a significant

impact on businesses. These encompass anything from commercial measures to minimise harm, through to government investigation and disciplinary proceedings of a business. All these influences can have a dramatically negative impact on your turnover and reputation.

We have seen in recent months a particular increase in activity from the Office of Liquor and Gaming Regulation. Disciplinary actions are on the rise as the greater public, political and media pressure comes to bear on the regulator. Likewise, issues such as the compulsory variation of licence conditions and the proposed categorisation of venues as 'high risk' are starting to be more prevalent as the perception of what is or is not acceptable gradually shifts. In addition, external factors such as decreasing land and business values, finance issues and increasing insolvency concerns across many sectors also come into play.

With such an arsenal leveled at the industry, you need to be prepared to engage when it is necessary. For that, we have a team of professionals who are experienced in disputes that commonly confront licensees. With their assistance, you can be sure that the unique requirements licensed venues have are taken into account, whether it be answering OLGR disciplinary proceedings, dealing with investigators or licensing disputes, taking a landlord or tenant to task for breaches or protecting your interests before a Court or Tribunal.



Mark Madsen (Partner) and Chris Hargreaves (Associate) of our Commercial Disputes and Insolvency Group have been dealing with hospitality related disputes for years. We already have one of the State's most successful front-end hospitality practices, representing hotels, clubs, nightclubs, restaurants and resorts. The additional, experienced litigation support provided by Mark and Chris ensures that our clients have the specialised and commercial advice needed to deal with any problems that might arise.

Mark and Chris offer a sensible, cost effective and commercial approach to dealing with disputes. If commercial negotiation isn't an option, however, they also have the necessary legal clout and experience to ensure that you have the best team behind you.



CURT SCHATZ
EDITORIAL

The start to 2011 has indeed been an interesting one. The floods in Queensland have affected many of us, and most businesses have suffered or will suffer some profit reduction as a result.

Many industries have obviously been badly affected including flooded hotels, flooded clubs, residential sector, consultancy sector, farmers, and many businesses that interact with these sectors. The residual impact may be with us all for some time.

It has been amazing to see the response by the hotel sector in particular, the hotels and clubs associations and the general public to assist all of those in need.

This month my Partner Michael Klatt looks at the importance of getting proper advice for estate planning which should form a crucial part of any succession plans. I urge any of you that have not taken proper advice or had your wills reviewed recently to consider this article carefully and if any of the issues relate to you then give Michael or myself a call.

We also look at the many areas where licensees have compliance requirements and issues. As most of you are aware the Liquor Act was amended substantially from the 1st January 2009. Two major planks in the amendments were to make licensed premises safer and minimise the harmful effects of alcohol abuse.

This leads to challenges for licensees and to my litigation Partner Mark Madsen who assists in this area. Mark has written an article on how his team including Chris Hargreaves may assist you.

I also remind you of the importance of all approved managers holding an actual licence from the 1st April 2011.