MAXIMIZE BUSINESS VALUE PODCAST - EPISODE 23 Transcript with Cleve Clinton

Announcer: 0:05
Welcome to the maximize business value podcast. this podcast is brought to you by mastery partners where our mission is to equip business owners to maximize business value so they can transition their business on their terms. Our mission was born from the lessons we've learned from over a hundred business transactions, which fuels our desire to share our experiences and wisdom. So you can succeed. Now, here's your host CEO of mastery partners, Tom Bronson.

Tom Bronson: 0:35
I'mTom Bronson and welcome back to maximize business value. A podcast for business owners who are passionate about building longterm sustainable value in their businesses. So in this episode, I'd like to welcome our guest Cleve Clinton, who is a partner at Gray Reed law firm in Dallas. I met Cleve through a mutual friend several years ago, and we've become great friends. He has presented at our V90X lunch and learn series of course, pre COVID. We hope to relaunch that again soon. And I learned that he is a master storyteller who as a corporate attorney with a broad spectrum of clients has been there, done that, and almost every legal situation I could imagine. As Cleve says, he represents Mavericks who dare big plan, big think big and get into big trouble. I love that today. We're going to talk about some of the legal considerations that business owners should really be thinking about related to longterm value and ultimately transitioning their business. Welcome to maximize business value. Cleve, how are you today?

Cleve Clinton: 1:40
Thanks Tom doing Great, a little soggy outside, but nice and warm and toasty inside.

Tom Bronson: 1:50
Exactly. So tell us a little bit about yourself in Gray Reed.

Cleve Clinton: 1:54

I've been with Gregory for over 20 years where a as everybody else seems to say a full service law firm, perhaps one of our distinctions is we've been one of the regular best places to work in Dallas. And as one of my partners is often said, contented, cows give good milk. And as a result of that, we not only are we great lawyers, but we provide we're happy. We're contented. We provide good services to our clients for a wide wide range of services. Mine happens to be, I'm a board certified civil trial lawyer who has over the years discovered that most of my clients are Mavericks and those folks, uh, they don't much care for lawyers and they certainly hate the courthouse.

Cleve Clinton: 2:37
As a consequence. My job over the last multiple years has been, how do I figure out a way to either get him out of the courthouse successfully and efficiently, or, uh, how do I keep him from getting to the courthouse in the first place?

Tom Bronson: 2:52
That's that's awesome. So, you know, as you, as you mentioned that I know you're a certified trial lawyer, but a popular among business leaders is that kind of all attorneys are the same. Um, yeah, I really couldn't disagree with that any more completely, uh, because I think attorneys kind of like doctors are specialists. You wouldn't go to a brain surgeon if you have a foot problem, but I see that all the time with clients as an example, you know, when I ask them their relationship with their, with their attorney, they'll say, Oh, I've got a great attorney. He handles all my stuff. Or what did he do for you recently? Oh, he was a, he really handles all my real estate stuff. Well, that might be a real estate specialist. I always say that you need to have kind of a general counsel type of an attorney at the top. So you gave us a little bit, but why, you know, you're, even though you're a trial attorney, why are you kind of focused on being a general counsel?

Cleve Clinton: 3:48
I enjoy it, Understanding my client's business and I enjoy the relationship of having a long term relationship with

Cleve Clinton: 3:53
a client, the experience

Cleve Clinton: 3:56
and the understanding of their business that provides permits longterm.

Cleve Clinton: 4:00
relationship in

Cleve Clinton: 4:02
Frequently, uh, I'll find that my understanding of their business gives him insight sometimes that they never would have had themselves as I was telling my wife recently. In fact, maybe this morning, I said, you know, a lot of folks will say, I need to build a house. So I guess I need to hire an electrician, a plumber, a concrete man, and an attorney to look over my documents. That's a transactional relationship and customarily. I'm not the guy that does only transactional relationships. I've got guys in my office at handle that I got real estate experts. I got construction experts

Cleve Clinton: 4:36
And so forth. So

Cleve Clinton: 4:38
Relational. And it's more of a general counsel relationship. And it's evolved into that because of the Mavericks that are represent that have a variety of problems.

Tom Bronson: 4:48
No doubt. You know, I, I can vouch for that. I know that, uh, as you've been a regular attendee and a speaker at our V90X lunch and learn, uh, Cleve has great longterm relationships with lots of his clients. And, uh, so I can confirm that. So I'm frequently asked to make a presentation that I, that I give regularly on 50 things you can do to maximize the value of your business. We're going to dive into some of those things today. One of the things that I talked about, uh, and in fact, one of the first questions I ask our clients when we engage with them, is, are your corporate records in order? And look, nobody's corporate records in order, or very few companies, corporate records are up to date. We think you should review your corporate documents regularly and think about having an attorney, do it for you. Do you agree with that and why? Well, obviously, yes.

Cleve Clinton: 5:43
It's a nice softball question. So I'd have to agree with you. Of course. Yeah.

Cleve Clinton: 5:47
But beyond that, I mean, maybe

Cleve Clinton: 5:49
People feel like that it's just a matter of corporate formality.

Cleve Clinton: 5:52

Would be a common phrase that you might hear and that would okay.

Cleve Clinton: 5:58
To not be worried about corporate formalities and go to Google and let mr. Google provide your answer to your, your, uh, annual meetings. But if you've got, if there's more in your business than you, and if you've got a banker who frequently wants to know if you met, if you followed all your corporate formalities, or if you've got an accountant who would like to help you do an audit and you need an audit for some reason or law, or recently, if you've got a loan with a banker and you've got a PPP loan, at some point, a PPP loan is going to require a whole lot of conversation and a whole lot of demonstration of satisfying the underlying criteria. And that's something that some accountants can do, perhaps some, a CPA's and some, a CFO's of companies can do that by and large. You're going to want to make sure that you satisfied the criteria and frequently that's going to be apparent that you've had meetings. And you've talked to your board of directors, or you've talked to your members, your owners of your company, your partners, your shareholders, whatever is going to be apparent from your minutes that you discuss the issues that should have been discussed to satisfy the requirements, to be, uh, to have your PPP loan forgiven. That just happens to be a good local current example.

Tom Bronson: 7:18
Oh, that's it. That's a great example. You know, another thing that frequently comes up is when they say, well, you know, we don't really have shareholder meeting. You know, we don't have our, our, um, uh, any board meetings. We don't have a board, we don't have any board minutes. And I said, but what about corporate resolutions? And they said, well, we don't really have any of those. I say, well, do you have a loan from the bank? Well, yeah, I do have a loan. Well, I promise you in those closing documents, there was a corporate resolution that had to be signed. And so if, so that probably belongs in your corporate records, right? That may, you know, most people don't realize that they actually do have resolutions that may have been thrust upon them. To me, it's about when, especially at a time for a transition, a, a, a corporation that has all of their corporate documents and records in order in the right place, you know, in the book.

Tom Bronson: 8:13
So to speak, if you have a book and a lot of people do that electronically now, uh, but that's one of the first places a buyer does due diligence is on corporate records. And if your corporate records are in order, that sets up a due diligence to go a lot smoother than if they're a mess. If there are things missing, if there are things not there. So, so I love now, now it also, I guess your corporate records that you need to keep depend on the type of

entity status that you have. I mean, the C corps and s-corps and LLCs have different requirements for the records that they need to keep.

Cleve Clinton: 8:50
I enlarge the minutes or set of documents that just reflect what they, what was talked about, not an excruciating painful detail, but just topical. I mean, for example, I represent several families and those families will periodically complain that they're not getting all the information. They don't know what's going on. They don't, they don't understand what's what's happening with the business. If we get a PPP loan, what does that mean? And how does that affect us? Are we going to be, is he going to be satisfied? They read the paper, they, they listened to the news and it creates a lot of questions and issues. So I've encouraged the executive committee of an LLC that I represent to right when they have their meetings every couple of weeks to put in their executive committee minutes, formalized minutes information. That is one of the members of the family would want to have answers to so that any family member at any point can go to the secure company website and look at the EAC minutes from the last year or two years, being able to read the minutes. And along with the minutes, you've seen the financials, you see the reports on what's been gone going on in various warehouses. Again, it's not an excruciating detail, but it is a communication methodology that allows everybody to know what's going on. And for the officers to be able to see the say, there is no excuse for you to not know what's going on. Just pick up the ECC minutes and have a look,

Tom Bronson: 10:18
Right. And it's so much easier to keep up with, you know, as you're going along, as opposed to trying to make those up, you know, five years later. Right. And try and figure out how to put that in so much easier. Yeah.

Cleve Clinton: 10:31
So the bank is asking for proof. Yes.

Tom Bronson: 10:34
Tried to convince my kids that it was easier to clean up their room as they go, but you know how that works out too. So, uh, so, uh, speaking of examining things, corporate records, we think business owners should, should think about examining their entity status as well. So c corps, s corps, LLCs partnerships, things like that. We think that you should examine that on, uh, on at least some sort of a routine basis. Um, my own example of that is we were in my last company, we were an escorp and we took on a non qualifying shareholder as an escorp. And we automatically defaulted to a C Corp, which caused us some tax issues at transition later that we should have addressed. But why is it important

then? And, and how can you help your clients to, to kind of examine that on a routine basis?

Cleve Clinton: 11:26
Your question, your, the example you gave is perfect. And it happens altogether too often. Uh, it's not uncommon for dad to startup proprietorship. And he's got, it's basically just dad doing business and maybe someday becomes dad and sons. And then he gets ahold of a lawyer. The lawyer says you need to form a limited partnership. So he forms a general partner in a limited partnership, general partner, corporate, then Texas imposes franchise taxes, and says, Oh, you're going to have to pay franchise taxes unless you are a bigger part. It starts off as a corp, unless you're a limited partnership. And so then it goes to a limited partnership. The limited partnership really has got limitations on it for the kinds, for some kinds of businesses. And doesn't allow the kind of growth in numbers of owners. Sometimes that LLC could better accommodate the beauty. I think of an LLC is you've got a company agreement, which is just a nice big contract.

Cleve Clinton: 12:27
That's between all the owners that says, this is how we're gonna work with each other. This is how we're going to preplan for officers and directors. And this is how we're going to conduct our business, that all that periodically that'll change. And then the tax situations change as it has happened with the last administration. And very well may happen again with the next administration. So having somebody to look at that, sometimes an accountant's going to do a pretty good job of putting you on notice, Hey, you need to look at this, but there's other reasons to look at your tax status. And we'll talk about our suspect in a minute about consolidating businesses.

Tom Bronson: 13:03
Yeah. Yeah. One of the, one of the things, you know, as we, as we talked about, you mentioned, uh, the, the family, uh, shareholders and whatnot, and sometimes you have outside non non-employees shareholders, uh, outside investors. Um, one of the things that, that we like to advise clients is if, if their cap table is getting kind of, um, out of hand, if they've got lots and lots of shareholders that they should think about consolidating ownership, as much as possible, uh, potentially buying out shareholders or combining, or doing some things like that, do you think that that's something important that the business owners should examine?

Cleve Clinton: 13:41
Absolutely. Particularly, for example, is our recall there's a hundred member cap on an LLC, which may be outside of the numbers you're talking about, but if you go over that

number, then that creates problems. Certain businesses don't permit you to have others who are less than 21 years of age. For example, alcohol in the beer business has those issues. Or if one of your members is convicted is convicted of a felony that could be problematic to your license, ultimately your ownership of your license. And so knowing those, the answers to those questions, but ultimately the, the example that you posed strikes me as being most problematic when it comes to having thoughtful decision making at the top, they strategically driven and tactically successful and some, and the more people you have without having a system in place to periodically and thoughtfully elect the right people to be in charge can be very problematic.

Tom Bronson: 14:40
Oh, totally, totally agreed. Totally agree. And that's another reason, although we didn't really talk about this earlier, but that's another great reason to have an operating agreement. Uh, so, so know who's making decisions, right. Um, so, so another sort of a corollary to, to, um, to consolidating ownership is, is addressing and institutionalizing lurking family, and or shareholder issues. So, um, uh, I've talked about, uh, before a couple of examples of that, where, where there are children that are, that are not in the business, but they're being paid, uh, from the business, that kind of thing. I have you run into that kind of thing. And, and has it caused some challenges and, and if it's left on addressed, how can it impact the business?

Cleve Clinton: 15:31
Well, it's almost certainly a problem frequently, uh, first, uh, initiated by the solo owner and perhaps his wife or the solo owner, perhaps her husband in either way. Um, the thought can often be, well, gee, we got this great company. We'll just make them employees and we'll give them all medical insurance after they turn 25. And that way they've all got health insurance and they've, they've got a good group plan under the company umbrella, uh, or we may give them cell phone, or we may give them a little bit of spending money. We'll call them employees to make it spending money. Well, if you're planning on the business, selling are going away after the odor does male or female, then you can almost imagine that there's going to be a fight. That's going to take place between those who are like Kenny, penny, those who are making the bread and those who are eating the bread and the it's almost certainly going to be a problem. And it's one that if you don't deal with now, it will be a catastrophe later.

Tom Bronson: 16:38
Yeah. Yeah. So let's switch gears for a second and talk a little bit about legal agreements, right. And things that, that you should have. We often tell our clients that they need to have buy, sell agreements with their shareholders and or partners. Why is that important?

And w and why should, if they don't have it already and they've got partners or shareholders in the business, why should they have something like that?

Cleve Clinton: 17:02
Well, if there's only two of you, a buy, sell agreement is critical and frequently. My favorite would be kind of with the shotgun buy, sell agreement, sometimes it's called, or I like to think of it as one of you gets to, gets to cut this pig, big uncut pie. And the other one gets to pick which piece they want frequently done with. One of you picks a number. The other one gets to decide if I want to push or pull, buy or sell on that number, whatever it might be. If there's two of you, that's almost, I can't imagine any other way, short of really painful litigation to get out of that kind of an arrangement. If there's more than two people, or they're certainly an odd number, then a buy sell agreement makes sense. It's not quite as necessary,

Cleve Clinton: 17:51
But what is it

Cleve Clinton: 17:52
Important about it is having an orderly way

Cleve Clinton: 17:54
To dispose of ownership, for example,

Cleve Clinton: 17:58
Well, in an LLC, it's not uncommon to provide that only a lineal descendant can be the beneficiary

Cleve Clinton: 18:05
Of a member's interest. The value of that, if it's not obvious,

Cleve Clinton: 18:09
This would be, you'd not, may not necessarily choose to have your family is

Cleve Clinton: 18:14
As your partners, but you almost,

Cleve Clinton: 18:16
I certainly would, may not want to have your

Cleve Clinton: 18:18
In-laws as partners. And if, what if a family member does in your school

Cleve Clinton: 18:23
Can be, uh, have the opportunity to deal with a, an in law who knows a little bit, nothing about the business as your partner. That's what you want to either. You want to provide in your, in your operating agreement, your company agreement, that is that a must go to a lineal descendant. And if it doesn't, then the partner, then the company has got the right to buy out the non lineal descendant, so that they're not going to be a voting member of the partnership, the limited liability company, or the partnership, or you have some other arrangement buck, which you can, uh, you can address in a non litigious fashion, the problem of dealing with people who otherwise are not going to be able to get along and the company He's going to suffer the business will suffer.

Tom Bronson: 19:10
Right. Right, right. So, um, you know, it occurs to me as you, as you mentioned that, so the company may have the right in a buy sell to, to buy the shares back. Um, isn't, you know, in that case you might wind up having to get a certified business valuation or something. Is it possible to avoid that by agreeing to a valuation methodology, uh, upfront when you sign the agreement?

Cleve Clinton: 19:40
Sure. There's a number of ways you can do that. Uh, you can use book value, which is the worst way, which, but it's not that uncommon. Uh, you can use a multiple of EBITDA, then you gotta define what EBITDA looks like. Uh, you can use, you can use a business valuation or frankly, a way to do it. In fact, I've got a case right now where we're doing exactly this, the starting point is where the part can the partners agree on what the number is. They see a category and at this particular case, it's an LOC. Dad died. He owned 55%. His estate cannot be a member. They can, they can not be only be a designee. The company core requires him to be bought out his estate to be bought out. And in the process of buying it

Cleve Clinton: 20:29
As a state, the first process first step is,

Cleve Clinton: 20:32
Can you all agree on a number? If you can't agree on a number, then it goes to mediation. If you can agree on mediation in mediation with a both sides coming up with a valuation by a, uh, an, uh, Mai somebody got a certification that knows what they're doing, not just a

broker. Then if that doesn't match up with a mediation, then they go to arbitration and there's a reasonable probability we'll end up in arbitration on the issue.

Tom Bronson: 21:01
Well, as I always say, try and work out a deal because you can go wind up doing all that, and then nobody's happy.

Cleve Clinton: 21:09
Right. But the good news is. And frankly, the really, really good thing about this situation is that the dad had the fore thought to sit down and say, I want a company agreement. And this is what I want it to say without a company agreement and a path, a roadmap for how to deal with this problem, you'd be in a longterm litigation over an amount of money that would never be big enough to justify the law, the legal fees and litigation.

Cleve Clinton: 21:36
So he dad a really nice job. Now, the estate and the daughters, maybe they're coming about it a little bit in a way that dad didn't have in mind, but we've got a process and we'll get to a solution for sure.

Tom Bronson: 21:49
We're going to talk about that again. A little bit about that, making sure your wishes are not, you know, we're, we're talking about agreements and things like that. I think handshakes or handshakes are a great way to start a relationship. Of course coivid but we don't shake anybody's hand. Now we elbow bump or whatever it is, but written agreements, in my opinion, minimize future conflicts, right? You, if you can address something in advance, I always say that an agreement is what you write and it goes into a drawer until there's a disagreement. And then you pull out the agreement and you do what it says.

Tom Bronson: 22:23
So, but handshakes are great. But I always say that, look, if you've made a commitment, why wouldn't you memorialize it in writing? So what are your thoughts about that?

Cleve Clinton: 22:34
Well, obviously another softball, I couldn't, I can't help, but agree with you. And what you'll find is that if it's an initial, single transaction, like I'd like to buy 10 bales of hay from you, I'll bring out the trailer, I'll pick them up. You don't need anything in writing for that. On the other hand, if I'm going to plant the hay and we'll split the hay at the end of the day, who's going to pay for the cost of the labor, the fertilizer or whatnot. That's a different

deal that ought at least being an email that says, yeah, this is what we agreed to in terms of the more detailed agreements at a client. And it was what, one of my favorite clients of all time, they ended up selling it.

Cleve Clinton: 23:14
Oh seven, sadly for me, the great for him at my urging. I said, this is a great time to sell. I hate to tell you, but it's a great time to sell. He did. And he did stupendous, but before all that happened, he was in what I called R and D on the fly. And he would have somebody come into his office and say, I'd like to build, I'd love for you to build this unit for me or radio. And my guy, they would ask my guy, well, how much do you want, uh, for per unit, my guy would say, well for what you did, it'll be a thousand dollars for a hundred units. So it'd be a hundred dollars a piece. Uh, and, and my, and so what would happen of course, would be the, the, the purchaser would say, Oh, of course I want 10 units by guy, in order to get, to, to be able to purchase it, to, to be able to sell it for the price of a hundred bucks a piece, he would go out and buy product enough, uh, uh, materials in order to make a hundred.

Cleve Clinton: 24:07
And of course the guy would buy one or pay for one this over time. And then there would be this battle of the forms. And I don't know if you're familiar with it, but you know, one guy would send a form, which is a purchase alert. Another guy would send a bill of lading. Another guy would send him before. You know it, you have this argument about battle of the forum's going back and forth. And each of the forums was unbelievably egregious. It made no sense for the other guy who would never have agreed to it if he'd ever picked it up, read the back of it. So in this case with this client, I said, look, you need to have an agreement much to your point, and you just need to have a master services agreement. And if the guy says he's going to buy a hundred units and he's going to, and you're going to, you're going to charge him 10 bucks a unit, then perfect.

Cleve Clinton: 24:49
Put it down in writing, tell him you're going to be buying this much in materials. And if he doesn't buy all of them, then he's got to buy your inventory back from you. So you're not carrying inventory. You're not gonna use what, believe it or not. He did do that a little bit. And he only did it because the only other alternative was to Sue all of his clients who weren't paying him to which he's responsive course was. What's a small industry. How could you expect me to Sue my customers and then not get mad at me and the word not get out of the industry? Well, you know, pick one, go bankrupt because you haven't gotten any customers or go bankrupt because you got great art, but they're not paying. I mean, whatever you want. So anyway, he ended up with a master in the manufacturing services

agreement, and that allowed him both to get his customers, to toe the line and be thoughtful about their budgets and their purchases and their POS it also, which I never imagined this to be the case.

Cleve Clinton: 25:42
That was my intent to go. But the, the other thing that came about was bankers were interested in him because he had a written contract with his customers. And bankers had, particularly those bankers that were, uh, asset based credit, uh, customers, they would, they would be able to look at a set of contracts and no one expected the cost that the client, their banking customer who had a chance of getting repaid. And so, um, it worked out in several different respects and the client reported to me later that he was able with one client alone to make sure he got paid over a million and a half dollars that he would not have otherwise been paid. So obviously I have a little for his agreement.

Tom Bronson: 26:25
Yeah, exactly. You know, you don't get a percentage. Well, you know, I've got another great example of something that I, that I think should have been in writing. You know, as you know, I've done a hundred transactions either as buyer or seller. Most of those I've been the buyer. And one of the things

Tom Bronson: 26:44
That I always talk with sellers about is what about taking care of your employees? You know, we want them to come on as our employees and we're going to take care of them post transaction, but, you know, have you put anything in place to make sure that your employees get a piece of this transaction or something like that to reward them for their hard work? Uh, one example that comes to mind many years ago, I bought a company. We wrote a big, uh, seven figure check, uh, to, uh, to buy that company. And when I'd asked them about, have you, you know, what about taking care of your employees? Do we want some of this to go to the employees? We can take care of that, right. At closing, you know, we can have all that done. We'll take care of it. We we've got some of that in place.

Tom Bronson: 27:25
We're going to we'll take care of them. And the employees of course had already intimated that to me. Yeah. They said, they're going to take care of us. Right. And so we just go on our fat, dumb, happy way, thinking that the employees are taken care of. And about a week after the transaction, uh, uh, I'm in the site and visiting with the employees and they're mad, almost all of them. I mean, they're just angry. And I'm like, what, what is going on? And, and individually one at a time, the management team were coming to me and complaining about, uh, what they got from the former owners at the transition, you

know? And so I went to the former owners and I said, guys, I thought you were taking care of them. We did. We took very good care of them. And I said, well, if you don't mind my asking, you know, how much money did you pay out to your management team? And now don't forget, this is a big seven figure check, you know, I'm sorry, it was an eight, eight figure check, sorry, eight figure check. So it was solid, you know, tens of millions. And, uh, they set aside a hundred thousand dollars and broke it up among like 20 employees. So they,

Tom Bronson: 28:35
The average employee got, you know, like five grand, right. And most of them, less than that. And so now I get into very close detail. Look, if you, if you make a promise to your employees, that's just an extreme example. Right. And it caused us a lot of pain. I had to overcome that a longterm. Uh, but, but if you get into an agreement, you know, um, Oh, I hear this all the time. Oh, I'm gonna, I'm gonna make him a shareholder. Well, okay. W

Tom Bronson: 29:04
What are the rules around that? And do you have that Memorial?

Tom Bronson: 29:07
Are you going to, you know, set that up and by the way, you need to probably take care of that long in advance so that, uh, uh, and the pending on the street,

Tom Bronson: 29:15
It depends on how they're going to be taxed

Tom Bronson: 29:17
On that at the end. But, uh, but to me, if, if you utter the words, I'm going to do this, then why wouldn't you go out and put that in writing? Uh, that just, it frustrates the full out of me. If you say anything like that with employees.

Cleve Clinton: 29:33
Absolutely. And frankly, from your perspective, you're going to own their problems. And it's like, you're going to own their litigation. You're going to own their employee

Cleve Clinton: 29:42
Problems. And if they've made promises to their employees, that they didn't keep, well, rest assured you're going to have disgruntled employees. So if you don't, if you don't need, and you expect to lay off the employees, then it's not a big deal. But if you have plans for

those employees to stay around for a while, then, then all of a sudden you own the problem they left.

Tom Bronson: 30:03
Yeah. Yeah. And then I, yeah, exactly. I own their problem now. So, so, uh, last thing before we take a break here is, uh, how do you feel about obtaining non-competes non-solicitation agreements from employees?

Cleve Clinton: 30:17
Well, the first thing I think about that is Texas is different. And, and secondly, I think that if you decide you want one, and you're going to go to talk to mr. Google about getting one, then go ahead and have him prepare a will for you too, because I think it'd be a really bad idea. I mean, you mean the Google

Tom Bronson: 30:37
Is not a good place to go get a legal degree,

Cleve Clinton: 30:42
Unless it's for, you know, a couple of hundred bucks in one employee. You know, I just, I would not recommend it at all. There in Texas, there was a time around 2000, 2005, the Texas went through a whole lot of, uh, of legal challenges and legal, pressed it, several Supreme court cases on the issue. What it really boils down to is if that employee left tomorrow and competed with you, would it be a material difference to your business we're shed? And this is probably more problematic if the employee left tomorrow to form their own business. And they started hiring away all your employees, because they're a lot nicer to them than you are. There's a coup there may be perhaps a lurking issue below that for you, but nonetheless, if they hire, if they're able to horrify your employees. So you got nobody to work for you and you weren't planning on working beyond another five or 10 years, then that could be even more problematic than a noncompete or the solicitation of employees could be more important or problematic than employee leading and competing with you.

Cleve Clinton: 31:48
So it is something we're talking about. It is something worth looking at. And frankly, if you're looking at selling your business, that can be very important. And back to your point, Tom, about, about running off employees, by ticking them off, if you're planning on selling your business or having somebody step into your shoes, if you die or whatever, becoming capacitated, you're going to want somebody around, that's motivated to stay and help run the business. If you sell your business, they're going to want the same thing. So that's

when you really want to be thoughtful about it, and really the noncompete and non-solicitation with your most important employees like that ought to be tied to some sort of bonus plan or ownership plan or something along those lines that gives them an incentive. And, uh, frankly, I, uh, they're, they get to share in the benefits

Cleve Clinton: 32:40
And the profits of the business make sense, depending upon how important they are to you.

Tom Bronson: 32:46
Yeah. When I, when I get into that conversation with, uh, with business owners, the common reaction is, Oh, they're not enforceable anyway. Um, uh, I do know that here in Texas, uh, we are, we, is there a properly structured and written, you know, they're, they aren't enforceable, not, not true in many other States. I understand that, but, uh, but my opinion, I don't think that it should prevent you from at least seeking counsel to, to understand how do we structure this so that we can be enforceable when the time comes. And I can tell you from my own experience, owning businesses here in Texas, I've had to enforce them before and done so successfully. So, uh, so it's, uh, it can be done for, for the business owners that think that you can't do that. So I don't talk. And I've done that a number of times, myself and I got folks down the hall, that's all they do day in and day out. So, Right, right. So we're talking to Cleve Clanton, we're going to take a quick break back in 30 seconds

Announcer: 33:40
mastery partners, equips business owners to maximize business value so they can transition on their own terms. Using our four step process. We start with a snapshot of where your businesses today. Then we hope you understand where you want to be and design a custom strategy to get you next. You execute that strategy with the help of our amazing resource network. And ultimately we help you transition your business on your terms. What are you waiting for more time, more revenue, if you want to maximize your business value, it takes time. Now is the time get started today by checking us out at mastery partners.com or email us at info@masteryapartments.com.

Tom Bronson: 34:32
We learned back in Cleve Clinton, an attorney with gray Reed, and we're talking about legal issues to address

Tom Bronson: 34:42

While you're maximizing your business value. So before the break, we talked about several legal things that you can do surrounding your employees, uh, and now that you've protected them and yourself, uh, what do you think about, uh, planning for ownership and management transition Cleve?

Cleve Clinton: 35:01
Well, we kind of alluded to that in the last, my answer to the last question before we took a break, Tom, and, and the, the dilemma that is often faced is that dad doesn't talk about it. And he doesn't have anybody capable of backing him up if he was to become disabled or incapacitated and frequently, and mom, I'm sorry for those of females that motto and their business, I'll try to start. I'll try to flip the example the other way for a while, if mom owns the business and predictably a minority owned business, often, then what you're you're faced

Cleve Clinton: 35:38
With is if, if she goes away and there's nobody able to take care of it, often all the assets that the company that the couple owns are tied up in the business, they may have a little bit of a 401k. They may own some real property. They certainly own their homestead, but by and large, the value of their, their heart, their blood, sweat, tears, and equity, it's all in their business. And so if one of the, one of them is incapable of running the business, that could be very problematic.

Cleve Clinton: 36:06
So

Cleve Clinton: 36:08
You asked about, so should there, should there be a plan? Yes. There should be somebody that takes care of there's somebody there that can run the business. If the principal owner of mom cannot,

Cleve Clinton: 36:20
Mama,

Cleve Clinton: 36:20
Dad should sit down with the kids and say, look, this is what we're going to do. If when we died, this is the plan. If one, if one of the kids is going to run it, this is the plan. This is what we expect of you. I had a good friend, not a client, a good friend. And I said, Oh, I said, George, actually George. I said, uh, so you're, you know, you're getting on up in years and you've got to grow. You've got a lot of good stuff. Oh yeah. I've got a lawyer. He actually

was using a lawyer estate planning lawyer in San Antonio. I know very well. And he says, yeah, I'd sat down. I talked to my lawyer and we got it all worked out. I said, what have you sat down and talked to your kids? Have you explained to your kids what you expect them? She had four daughters and sh and he said, nah, I'll let Phyllis take care of that.

Cleve Clinton: 37:11
Anyway,

Speaker 3: 37:11
If I guess if that's the answer, then there's a whole lot. There's very little explanation. That'll fix it.

Tom Bronson: 37:17
Yeah, yeah, no, no doubt. The, uh, you know, one of the, one of the issues that I've run across with, uh, succession planning is in fact it was, uh, just an example of what you said, uh, uh, a female owner, uh, aging, uh, in her seventies, you know, the husband and wife owned a, but she really owned the business. And, uh, and they both worked in it, but the intention was to transition, you know, at death, the business basically goes to their, to their son, that's working in the business, but none of it was documented and there was no plan. There was, and there was a, there was a sister involved in that, not in the business, but so it just really makes sense to get that kind of stuff cleaned up. And by the way, one of the reasons that, uh, I, uh, I asked her, I said, why, why haven't you dealt with this and her response? Um, didn't surprise me, but it was kinda a little bit surprising. She says, why I don't want to quit working. Well, it doesn't mean you have to quit working. It means planning for what happens when you don't want to work, or, or when worse something happens. I mean, you know, the, if something happened to you, what's going to happen with this business, you know, what would happen? It would have been in a world of hurt. Now

Tom Bronson: 38:36
Wasn't my, uh, attacked the advice that solved the problem. It was COVID, uh, when, uh, suddenly she couldn't come to work anymore because she was aging in a risk category. Uh, and then the son had to learn what she did. He had to understand all of that. And she hadn't teach him basically remotely over the phone in order to do that, and that forced them into going out and memorializing those things. So I really think that dealing with those transition issues in advance just makes good sense. Just like, um, the owner making themselves expendable in the business. Do you agree with that? That they should be expendable?

Cleve Clinton: 39:17
Absolutely. I know there's softball in it. Absolutely. I, as always, Tom, I agree with you a hundred percent.

Cleve Clinton: 39:25
How can I disagree? Who orders right now?

Tom Bronson: 39:29
Not that you know, when you're right. All the time. Right?

Cleve Clinton: 39:34
Let's just, let's just admit it that this, uh, let's admit that that's that's, uh, I've got two guys right now, two owners right now, curiously not even kettle motivated by COVID who are both talking to me and my tax partner, probate estate planning guy about how to transition their business. One of them has got a service business and he's got, he's got two kids. His wife's got two kids. He wants to be equal to all four. However, one of the children, his is active in the business and his ranger wanted on a day to day, day to day basis. So we are walking through the process of how can we both on the estate planning side and on the business side, come up with a good handshake between the two businesses to make sure that the company that the estate works well with the business plan.

Cleve Clinton: 40:33
The other one is much to your point of earlier has got two children working in the business. They're in charge of the day to day operations. They're doing a great job. So unlike your lady, your 70 year old lady plus, who's got a son she had to teach over the phone. These two have actually thought through the process, they've sat down with their kids. They're going to tell their kids what they're going to do and what they expect. And it's much to my chagrin. Perhaps I'm doing more and more estate litigation and fighting between families over who gets what the good news for that family. The bad news for me perhaps, is that that's not likely that those families are gonna fight once dad or mom dies and that's really a greater answer or anyway, of course. Would that be a better answer?

Tom Bronson: 41:21
Absolutely. Look at that. See, you throw me a softball. I've been throwing you all these softballs. So, uh, so maybe I'll throw you a curve ball next. Well, not really, because it really goes that line. I think

Tom Bronson: 41:34

One of the tools that we share with our clients is to be thinking about and documenting and sharing their, what I call their living will, uh, with, uh, their business living will right with their family and their managers. If something happens to me, this is what I, how my wishes. I want them carry it out. Now, of course, that, you know, a lot of that should be documented in the estate documents, but running the business from a day to day standpoint, you know, this is my wishes. This is how I want the legacy carried out. That kind of thing. I think it's, I think it's critical, especially in the case of an unforeseen disaster, you know, by definition, you know, an unforeseen disaster can come, you know, at any time. And so, so what do you think about kind of documenting the way you want the business run later and sharing that with employees and family?

Cleve Clinton: 42:26
Well, every well run business should have its policies and processes documented. Uh, everybody's expendable, even the, even the owners, he or she are here that are, the owners are going to be expendable and they're going to be expendable either because they choose to leave or because for whatever circumstances, somebody enables him to leave or health wise or enabled to lead. And so, uh, having a way that the business, in fact, any successful business is going to have a strategic plan. And it's going to have a tactical plan, and it's going to have a renewable process by which the strategic vision and plan for the company are regularly reviewed. And the tactical points and the priorities are regularly updated to make sure that the business is moving along the right path for any or all of that to happen. You got to have your policies and your processes, at least bullet bullet pointed so that somebody can step in and figure out what needs to be done. Checklists are great, whatever the process is, it needs to be memorialized in some fashion that somebody else can step in and pick it up. If it's all stuck in your business owners head, then that's a, that's a recipe for disaster.

Tom Bronson: 43:39
Well, that's it. And I, and I, you know, not to, not to be morbid with our clients, but I, I asked them, look, what happens if you're driving home tonight and you get broadsided by a truck? What, what happens then? Uh, and, and many of them, many of them, uh, get an Ash and look on their face and they say the business will probably go away. Well, is that really what you want to leave to your family, right? Is that, is that the answer that you're looking for, let's go through a process and document these things and skip that stuff out of your head so that it doesn't go away with you. We all have an expiration date. We just don't know what it is yet. Right. And so, uh, so

Cleve Clinton: 44:18

What does it did your 55 or 60 year old husband who's relied upon the cashflow from the business. And it was expecting to rely upon the cashflow for the business for the next 30 years, and now has nothing but social security when they turn sixty five in order to be able to, to deliver.

Tom Bronson: 44:35
Yeah. It's not very much planning. No, no. So as we kind of sort of come down the home stretch here, I think it's a no brainer. Now here's the one that you may disagree with me on. I might throw you a curve ball here. So I think it's a no brainer to settle and avoid kind of lawsuits. Get out of lawsuits if you're in a lawsuit, get out of a lawsuit, but better yet, it's better to avoid lawsuits to me at all costs. I know that's bad for your business, but do you think it's important to kind of a lawsuit avoidance lawsuit avoidance

Cleve Clinton: 45:10
Now put, put the softball back up,

Cleve Clinton: 45:14
Can I say no to lawsuit avoided? So that you're absolutely right on that. However, some folks and I had a client, great client also sold out at 2007 for very, very good money. Um, who, uh, my policy with that client was, I knew where the case was going. I knew whether I can win it or lose it. I knew what the other side might be willing to settle it or not settle it for. And my goal was to get ahead of my client and get to the good result before they jumped in there and paid a lot of money to make it go away. So yes, there are circumstances when you should pay money to go away. But yeah,

Cleve Clinton: 45:55
There are also circumstances when you risk

Cleve Clinton: 45:58
Overpaid for in almost every case, almost every lawsuit has got a path to a resolution. Sometimes the resolution might end up at the courthouse,

Speaker 2: 46:08
But you're right. Less than 5% of the time. Should it end up at the court

Cleve Clinton: 46:12
Before a judge or jury, but for the other 80, 95% of the time, you're looking at some, a variety of solutions that could get you to a better result than just throwing money at the problem. Even believe it or not avoiding paying a lot of money in lawyer fees and spending

less money on both the settlement and your lawyer fees than you would otherwise have had to spend. So there's a variety pass now, but ultimately your question is, should I avoid it? And yes, the best way to avoid it, we'll circle back to your, put it in writing if you've got an agreement in writing and it makes sense whether it be with your shareholders or your members or your partners in your, in your, your company, or whether it be with your customer,

Cleve Clinton: 46:59
Are your vendors having

Cleve Clinton: 47:01
Something in writing that says, this is our path to resolution. If we want to pick a fight with each other is the best answer to all that. And probably your best answer. I don't care who your lawyer is. Doesn't have to be me, but your best answer is probably to look beyond mr. Google,

Cleve Clinton: 47:17
The right answer, or to expect that you know, enough to be able to write it down yourself just by yourself.

Tom Bronson: 47:23
Yeah. I worked with people who think of themselves as, uh, you know, Perry, Mason, uh, and not attorneys, but about trying to write things and, and, you know, get, get that qualified person to do that for ya. Trust me, you will pay for itself in spades if there's a dispute later. So,

Cleve Clinton: 47:47
And this could be quick. I had a client who added friend. He wanted to be a partner. My client fell in love with zoom. He had 12, he had over a dozen LLCs that he owned 50 50 with his partner. And as you might, well imagine they didn't have a company agreement that addressed what would happen if they came to blows with each other. And they did come to blows only way to untidy that knot. Fortunately, they were involved in litigation with a third party for other reasons, and they were also fighting a little bit with each other through the litigation. I was able to force the parties to dissolve all the LLCs, but for that, they would have had to put each LLC into receivership in order to make them go away,

Cleve Clinton: 48:34
Not a pretty picture. So,

Cleve Clinton: 48:38
And LLCs you really back to your point earlier, Tom, and it was a, well, it was a great point. You need to have a buy, sell agreement and every, every relationship you've got partnership or otherwise there needs to be an exit plan that's laid out. That makes sense

Cleve Clinton: 48:53
For both parties.

Tom Bronson: 48:55
I totally agree. So, so finally, you know, we also advise our clients that they should, that every business owner should have surround him or saw himself or herself with what I call a great transition team of advisors that would include a solid business value expert, like mastery partners, a CPA, a banker or wealth manager, estate planning attorney, and a general counsel. Um, why is it important to have kind of a complete team to work together as you navigate for the best possible outcome? How do you work with these other professionals?

Cleve Clinton: 49:31
Well, what are the clients I'm working with, who is being thoughtful about bringing his two kids on, has talked about, we've talked about putting together an advisory board and the advisory board comprises exactly the people that you've identified. And, uh, and that advisory board would be one that would not understand the company would understand the ebbs and flows of the company would be Brad, at least aware of if not participating in the strategic planning of the company, understand the kids and the other employees, and be able to then give insight to the primary owner or in this case, either that, or if he does his wife in this case there aren't, I guess maybe they're both primary owners. They own it together. But in any event to put them in a position to where, uh, they've got an advisory board that understands the company well enough to assist the two kids, if, and dad aren't around to help.

Cleve Clinton: 50:29
And those people that you identified provide the panoply of services and, and issues that are going to be addressed by the company on it, on any kind of an ongoing basis. So, yes, I think that's a great idea. Uh, frequently, the next situation they're going to provide counsel, that's not going to be paid for on an hourly basis. It's going to be counseled. That's going to be as good or better than you would pay for it on an hourly basis, whoever else.

Tom Bronson: 51:00

And I know that you sit on the advisory board of many of your clients, and that's a, I think that's a, that's a smart plan. I've always had an attorney sit on, set on my advisory board. So, so as we wrap up here, what sets you and gray Reed apart from other firms?

Cleve Clinton: 51:18
I personally I'm relational and our firm strides to be very relational.

Cleve Clinton: 51:23
We don't, we are transactional. If need be, we get the deal done. We do the MNA, we do the contracts. We sell the real estate. We all, all that is done. We formed the entities. My personal interest is more in being the quarterback for all, or perhaps coach for each one of those, those specialties, each one of those areas of practice of law that really do have their nuances in their important, uh, understanding of non-competes what's the latest law non-competes are the latest law, non solicitations. My role is to be, as I said, the coach to bring in the right specialties to address the particular situation at hand, and then to understand the other team and understand that the teammates, how they play well with each other, and then communicate that back to the ownership.

Tom Bronson: 52:15
And of course you didn't throw in that happy cows give good milk.

: 52:21
And frankly, my folks are happy and that contented cows do give good cows.

Tom Bronson: 52:27
Yeah, sorry. Happy cows are the ones that make California cheese. Right? Happy cows are the ones who, yeah, exactly.

Cleve Clinton: 52:35
Who knows what they do to the stratosphere of the odor.

Tom Bronson: 52:39
So, so one last question, this podcast is all about maximizing business value. And we've talked about all kinds of things that business owners should be thinking about, but in your opinion, what is the one most important thing that you recommend your, your business owner clients do to build longterm value?

Cleve Clinton: 52:58

Well, it, it, it plays back into what we were talking about, but I'm going to sidestep that for a moment because you've deprived me of one of my favorite questions that I had to spend some time.

Tom Bronson: 53:09
Oh, no, I've got, I've got, I always, there's always the one bonus question. So I asked her don't, don't worry. I got them.

Cleve Clinton: 53:19
I'll be for the bonus then really what I found that's worked out really well. And it it's been an interesting dilemma with me at a couple of clients that I have to get to the point of, of making the point. But my position with all my clients has been, look, if you just pick up the phone and let's talk for 15 minutes before you sign that document, who knows what we could have done to have made your life and my life easier, because now you're in a position where you're saying, Oh, what can I do get me out of the mouse trap? And my response would have been, please don't eat the cheese, keep, keep your, your, your, your paws off the cheese. So that's perhaps a little bit of a longer way of saying, I think that clients should be considering having retainer agreements, having an understanding where the lawyer that is the general counsel type that you've talked about and let the lawyer understand your business, encourage the lawyer on their own time to come out and spend a day with your business in a day, half a day, with each of the principles which I've done in the COVID has given me that opportunity in the last couple of months and by doing so, the lawyer understands you and your business understands where you want to go and understands where some of your mind fields might be.

Cleve Clinton: 54:40
So that if you've got a contract to be signed and you, and you say, well, you know, T Cleve, would you look at this and spend 15 minutes and spend some time looking at this? And I can say, sure, no problem. That goes on your retainer and I'm going to, and I'm going to keep track of the time I spend on your retainer matter, but you're not going to get a bill.

Cleve Clinton: 55:01
That's part of your flat monthly fee.

Cleve Clinton: 55:03
And so in doing so, you've kind of prepaid for it. And knowing that you've prepaid for it, you're a whole lot more willing to give me a call and say, Hey, what do you think about this before I sign it? And as you might imagine, as with both me and Tom, if you ask us a

question, we'd got some ideas on ways that you might look at it that you, maybe you hadn't thought of it.

Tom Bronson: 55:26
And we have some stories that we can tell you about reasons why you might want to think about it that way. For sure.

Cleve Clinton: 55:32
And Tom said it

Tom Bronson: 55:34
As you can tell, I am really glad you said that, because that to me is someone taught me that years ago to have your attorney on a retainer. Yeah, we, in, in my companies, I've always had an attorney on retainer because to me it eliminates the question, Oh, should I call my attorney? Do I want to get a bill for this? And do I look if you're, if you have them for five or 10 or 20 hours a month on retainer, then I always told our people, our senior managers who would get into legal agreements with our customers and our vendors and whatnot, and say, look, if a client sends us an agreement, send it to the attorney. We're already paying for some time, let's use it. Right. And so, uh, so it just, it makes sense. It's easy to budget. It's a smart blank. I agree with you completely. And so now we'll get to my

Tom Bronson: 56:24
Bonus question. I always give this after the last question. So, and I'll bet I could take a guess at a good one or two for you, but what personality trait has gotten you into the most trouble over the years,

Cleve Clinton: 56:39
I'm tempted to ask you to answer the question first, but,

Tom Bronson: 56:42
Well, I have an answer, so, but you'd give me yours and Alto.

Cleve Clinton: 56:46
I'll be curious to hear yours. Uh, I gotta, I have to reluctantly confess, uh, break the rules,

Tom Bronson: 56:56
Break, you break the rules and they get you in trouble.

Cleve Clinton: 56:58

I do, I do. I break the rules, uh, and often like to think I use it to my advantage, but, but, uh, you know, I'll, I'll, I've often been accused of breaking too many rules. So anyway,

Tom Bronson: 57:14
That's a, that's a good one. I was going to say yours would be a lot like mine. And that is, that is, um, I want to be always be sure that I give a thorough answer. And so I liked to talk. Uh, and so, uh, people tell me sometimes that I talk too much. You know, what, what is that old saying? If I had more time, I would've written a shorter letter. Well, not me. If I have more time, my letter is going to be 10 times as long. Right? Cause I want to give you examples and reasons and all that stuff. So that's,

Cleve Clinton: 57:44
It's like the old preacher saying it was asked to deliver a sermon. He says, how much time have I got? And the guy says, uh, you got an hour. He says, I'm ready now. And then the next guy says, Oh no, no, I want you to preach it in 15 minutes. He said, I'll get back to you next week.

Tom Bronson: 58:01
Right. Right. Exactly. That's true. That's awesome. So how can our viewers and listeners get in touch with you?

Cleve Clinton: 58:10
Uh, there's a couple of ways. Grayreed.com, G R a Y R E d.com is where I reside with my firm. Tilting the scales.com is a blog that I do that is intended to be business issues with a, with a legal slant and more and more it's looking at issues that affect families and their businesses in transition, which is kind of all about Mavericks are getting older and as they get older, they're thinking or should be thinking about their businesses and their families in transition. And so that's become the focal point of a lot of what I do. And then finally, uh, c Clinton at gray, G R a Y Reed, R E E d.com cClinton@grayreed.com is that's me. And, uh, for now I would encourage anybody that's watching to. Now's a good time to sit back and think, where am I with my business? Where do I want it to go? And if you're interested in talking about, uh, what COVID has done to you and what impact it's made, give Tom or me a call. We'd love to talk to you about it because frankly, we're, we're very interested in you and your business. And we're particularly

Cleve Clinton: 59:22
Interested in knowing how you might've pivoted and turned in order to deal with the curve balls that that COVID-19 has thrown your business in the last six months. Have I spoken out of school Tom?

Tom Bronson: 59:37
I took the words right out of my mouth. We are very, both of us are very passionate about business owners and helping them to, to survive and thrive even during times like this. So, Hey, this has been a lot of fun. Thanks for being our guest today. Really appreciate it.

Cleve Clinton: 59:54
Thank you. Enjoy.

Tom Bronson: 59:56
You can find cleve at grayreed.com, G R a Y R E d.com or on LinkedIn. And of course, if you have trouble finding them, just reach out to me. I will connect you. This is maximized business value podcast, where we give practical advice to business owners on how to build a longterm sustainable value in your business. Even during challenging times like these, be sure to tune in each week and follow us wherever you found this podcast and be sure to comment and we'd love your comments. And we respond to all of them. So until next time, I'm Tom Bronson reminding you to protect yourself and your employees and your business legally, while you maximize business value.

Announcer: 1:00:42
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Speaker 2: 1:01:29
I wouldn't make any changes on that.