

REVIEW 2018

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Civility in business litigation is part of our culture

BY FRED E. MOORE, ESQ.

My wife has a saying that goes like this: "Everything is personal." She means that for our family, in all things in our lives, we aim to interact with people on a genuine level.

Our firm culture at Blalock Walters reinforces this notion for me, because we, as a firm, strive to develop relationships with our clients and make a difference for you, in business, but also ultimately in your lives. For some at the firm, this is a small leap to make; estate planning, real estate, and other transactional practice areas lend themselves to relationship building and teamwork towards a positive goal. Litigation inherently means conflict. However, in this age of questionable civility and ethics, regardless of the circumstance, I, along with my litigation colleagues, must remain committed to keeping the personal in our interactions, and treating each other with respect.

The issue that is raised for litigators and our clients is what does civility and respect look like in an adversarial situation. When clients find themselves involved in litigation, they deserve the guidance and assistance of an attorney committed to the best representation for the client. Part of providing that excellent guidance, however, is remaining true to the historical call of an attorney to serve as an example of the values we hope for in our community. Below I have outlined



Fred Moore, Florida Board Certified
in Business Litigation

three examples of how I remain dedicated to serve my clients while treating my adversary with civility and respect.

At times the opposing party or attorney in a lawsuit may request an extension of time to file pleadings or schedule court dates or depositions. Life happens to all of us, and in these situations, I look to the reasonableness of the request. I consider whether granting the extension will adversely affect my client's rights, and if the extension will not adversely affect my client's rights, I grant the request. Refusing the request without a legal reason to do is ultimately only reinforcing the negative feelings already involved

and does not get my client any closer to resolving the problem he or she is facing. Instead, extending grace to the opposing side may expedite resolution.

Clients often ask me why I do not react to an overeager demeanor of opposing counsel in the courtroom with a similarly aggressive response. Be mindful that someone is always watching; most notably, the judge or jury are watching. Responding to unprofessionalism in the courtroom with unprofessionalism will not result in a more favorable outcome for my client and will most assuredly leave everyone involved walking away angrier and more dissatisfied.

Finally, people involved in litigation are often hurt, and they want to address every grievance. Part of providing excellent representation for my client is narrowing the issues in a case so that the client does not bear the expense or frustration of reliving every minute detail of the dispute. Behind the scenes, I am working to bring a more narrow focus on the legal issues and resolve those issues expeditiously so that my client can continue to run his/her businesses without worrying about

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A Message from the Managing Partner



Artificial intelligence adds to the practice of law, but don't discount the value of 'counselor at law'

BY JONATHAN D. FLEECE, ESQ.

Yes, soon we will be writing "2018" on documents as we beckon in another year. New Year's has always been one of my favorite holidays because it can represent so many positives in life, including new beginnings, hope for the future and a time to abandon legacy thinking.

A new era dawning in the legal profession is the adoption of artificial intelligence and cognitive computing (AI).

According to IBM, 2.5 quintillion (2,500,000,000,000,000,000) bytes of data are created every day. Shockingly, 90 percent of all this data was created within the last two years!

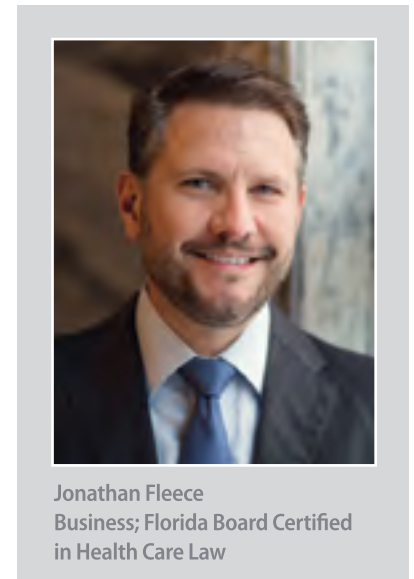
Moving forward, in order to properly advise clients regarding litigation, transactions, regulatory compliance and otherwise, attorneys will need ways to sift through, and more importantly, analyze all this data for our clients' advantage. In a matter of a few minutes, AI programs will exist that can read through massive amounts of unstructured data and produce summaries of conversations, including the ideas discussed, the frequency of the communication and even the mood of the speakers.

Another potential application for AI is predicting legal outcomes. Recently, Daniel Martin Katz at Michigan State University Law School developed an algorithm to predict the outcomes of U.S. Supreme Court cases. Professor Katz's AI programs attained 70 percent accuracy for 7,700 rulings from 1953 to 2013.

The attorneys at Blalock Walters have always strived to remain "one step ahead" when it comes to serving clients. Although AI will add another dimension to the practice of law, don't expect computers to replace an attorney's good judgment, strategic thinking, empathy and support any time soon. Indeed, we may be pushing a few more buttons in the future, but human hearts beat and minds remain strong at the firm.

May 2018 bring you contentment, prosperity and good health! The firm's AI predicts that it will be a great year! ■

Although Artificial Intelligence will add another dimension to our lives, one should not expect computers to replace good judgment, strategic thinking, empathy and support.



Jonathan Fleece
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those details. My clients can rest assured that I am working to move them out of the disruption as quickly and favorably as possible.

Litigation can be a trying time for a client. Because at Blalock Walters we care about our clients on a personal and genuine level, my goal is to work with my clients to lead them to a resolution that they can feel good about. That starts with not regretting how we behaved to get to that resolution. ■

Blalock Walters earns 'Best Law Firm' ranking by U.S. News & World Report and Best Lawyers

For the fourth consecutive year, the firm has been ranked as a "Best Law Firm" by U.S. News and Best Lawyers®. For 2018, the firm earned the recognition in the following areas: Sarasota – Real Estate Law, Litigation, and Trusts & Estates Law. Firms included in the 2018 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

To be eligible for a ranking, a firm must have a lawyer listed in *The Best Lawyers in America*, which recognizes the top four percent of practicing attorneys in the United States. Blalock Walters has four lawyers listed in *The Best Lawyers in America* – Clifford L. Walters, III, Charles F. Johnson, Matthew J. Lapointe and Robert G. Blalock.

More than 13,000 attorneys provided more than 1,000,000 law firm assessments, and over 7,500 clients provided more than 65,000 evaluations. Awards were given in 75 national practice areas and 122 metropolitan practice areas. One "Law Firm of the Year" is named in 74 nationally ranked practice areas. ■



BLALOCK WALTERS REVIEW

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Jill McGarry, Marketing Director



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The information in this newsletter is not intended as legal advice, but rather as a service to our clients, friends and other Internet users. If you have questions about any of the information contained in the newsletter, please contact an attorney for a consult. Please keep in mind that contacting us by itself does not establish an attorney-client relationship. Therefore, you should not convey any confidential information to us until a formal attorney-client relationship has been established after our thorough conflict of interest procedures have been completed. We welcome your inquiries, but please keep the above information in mind, as well as the fact that electronic mail on the Internet is not secure in most instances. Accordingly, you should not send confidential or sensitive information in e-mail messages. Thank you for your interest in Blalock Walters.

TAX DISCLAIMER

Our firm provides the information in this Newsletter for general guidance only, and does not constitute the provision of legal advice, tax advice, accounting services, investment advice, or professional consulting of any kind. The information provided herein should not be used as a substitute for consultation with professional tax, accounting, legal, or other competent advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all pertinent facts relevant to your particular situation. Tax articles in this Newsletter are not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding accuracy-related penalties that may be imposed on the taxpayer.

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein. This publication is not intended as legal advice, which may often turn on specific facts. Readers should seek legal advice before acting with regard to the subjects mentioned herein. Citations omitted due to space limitations but available upon request.

Tax certificates and tax deeds: real estate roulette

BY GREGORY S. DEMEUSE, ESQ.

Floridian property owners can count on a real estate tax bill every year in November and most dutifully pay those bills. Even more responsible property owners may pay before December 1 to take advantage of a four percent discount afforded to those who pay far in advance of the March 31 deadline.

But what happens to those who are delinquent—to property owners who neglect to pay their yearly property tax bill? Well, that's when things get interesting. **That's when some people gamble in the unpredictable realm of tax certificates and tax deeds.**

The action begins at the end of May each year. For those properties which the previous year's taxes are unpaid, the county tax collector holds an online auction for the purchase of a "tax certificate." A tax certificate represents the amount of taxes owed by the property owner for the previous year (plus certain costs and fees), and gives the purchaser of the tax certificate the right to collect the amount of unpaid property taxes for that year, plus interest. An auction begins at an 18 percent interest rate and continues by bidding progressively lower interest rates. The winner is that person who bids at the lowest interest rate. He or she becomes the holder of the tax certificate on the property, and has an enforceable first lien against the property for unpaid real estate taxes.

After the tax certificate auction, the waiting game begins. The certificate holder waits for the property owner to pay the tax bill, plus

interest, in order to reap the benefit (interest) from investing in the certificate. However, it could happen that the property owner never pays that delinquent tax bill. In that case, the certificate holder must await payment for two years from the delinquency date (but no more than seven years). During this period, the certificate holder is precluded from entering the property or intimidating the property owner into paying the debt. After this period expires though, the certificate holder may finally seek to recoup his or her investment in the tax certificate.

The certificate holder's next move is to file a tax deed application with the County Clerk of Court. This application specifies the current record owner(s) of the property, the property address, the assessed value of the property, and whether there is a homestead exemption on the property. As a prerequisite to filing the tax deed application, the certificate holder agrees to pay all delinquent taxes, to pay off all other outstanding tax certificates with interest, and to pay the current tax bill due on the property, plus administrative fees and costs. Effectively, the tax deed application lays the groundwork for selling the encumbered property and utilizing the proceeds to pay the certificate holder for the unpaid debt. Additionally, the certificate holder may use this process to gain an ownership interest over the encumbered property.

Once the application is processed by the Clerk of Court and proper notice is served, the final event involves auctioning off a tax deed to the property. Unless the owner "redeems" the tax certificate by paying all unpaid taxes, interest, plus costs and fees prior to the tax deed sale, the auction will ensue with the opening bid. The opening bid for non-homestead property is typically the amount paid to apply for the tax deed, plus the amount required to redeem the tax certificate, and all costs and fees paid by the applicant. The opening bid for homestead property is increased by at least one-half of the latest tax assessed value of the property. Anyone can participate in the tax deed auction, with the highest bidder being issued the tax deed upon receipt of payment by the clerk within 24 hours.



Gregory S. DeMeuse, Real Estate

Even if the certificate holder is the highest bidder, or there are no bids and the holder gets the tax deed by default, the odds of getting good title from a tax deed are far from perfect. Potential bidders should assess the ownership and encumbrance report, which provides chain of title to the property and discloses any liens and mortgages of record. Bidders should view any major liens or title defects as reducing his or her chances of getting good title. Liens held by state, municipal, or county governmental units are not eliminated by tax deeds, and many easements will remain on the property, such as those for drainage, utilities, or ingress/egress. Further, title based on a tax deed is generally not insurable until four years after issuance; and even then, only upon meeting certain conditions. Certainly, rolling the dice on tax deeds or tax certificates is rife with risk, and should only be done after proper research and consultation. County tax collector websites provide helpful resources for those interested in learning more about tax deeds and tax certificates, as do third party websites that host the online auctions. To those who choose to play real estate roulette, be prepared and best of luck!

Please contact our real estate department for a consultation regarding tax deeds and tax certificates. To contact Gregory DeMeuse, please call 941.748.0100 or [gdemeuse@blalockwalters.com](mailto:gdeuse@blalockwalters.com). ■



Non-compete agreements and protection of referral relationships

BY ANNE W. CHAPMAN, ESQ.

It is not uncommon for employers to require employees to sign agreements that contain non-competition provisions prohibiting employees from engaging in certain activities post-employment. The ability of an employer to enforce such provisions is not entirely clear under Florida law and is usually fact specific.

Recently, the Florida Supreme Court issued an opinion in *White v. Mederi Caretenders Visiting Services of Southeast Florida* (Case No. SC 16-28) and *Americare Home Therapy, Inc. v. Hiles* (SC 16-400) providing some clarification for employers concerning the enforceability of non-compete provisions related to the solicitation of referral sources. In doing so, the Florida Court resolved a conflict between the state appellate courts and held that referral sources can be a protectable business interest under Florida law.

Non-compete agreements are permissible in Florida and are governed by Florida Statute §542.335 which provides the conditions that must be met for enforcement. In addition to several other requirements, including that the agreement must be in writing and signed by the party against whom enforcement is sought, the agreement must protect a legitimate business interest. This means that not every technical violation of a written non-compete agreement is actionable (i.e. you cannot simply prohibit any and all employees from working for a competitor).

Florida's non-compete law is not meant to prohibit competition per se. Rather, as recognized by the Florida Court, it is meant to prohibit unfair competition which requires a showing of facts beyond the ordinary competition. For example, such a showing could be made by demonstrating that the employee by virtue of his position gained information

or contacts during his employment that could be unfairly used in new employment.

As a result, an employer must demonstrate that the non-compete provision it is seeking to enforce protects a legitimate business interest. Florida Statute §542.335(1)(b) provides a list of examples of legitimate business interests, including trade secrets, confidential information, substantial relationships with prospective or existing customers, patients or clients, customer goodwill and extraordinary training that are protectable under the law.

This list of legitimate business interests is intended to be illustrative and not exhaustive. Even so, in the *Hiles v. Americare Home Therapy* case, the lower appellate court held that a non-compete agreement could not be used to prohibit a home health liaison from soliciting referrals from her former employer's referral sources (including physicians and medical facilities) on behalf of her new competing employer. The appellate court reached this decision despite the fact that during her employment with Americare, Hiles's primary responsibility was to solicit business from these referral sources and Americare facilitated her developing relationships with these referral sources. In contrast, another Florida appellate court reached a contrary decision and held that referral sources in the home health agency context could be a protectable legitimate business interest. As a result of this Florida Supreme Court addressed the conflict and issued its opinion in September 2017.

In addition to holding that referral sources can be a protectable legitimate business interest under Florida law, the Florida Court provided some guidance on the issue. The Court noted that the inquiry of legitimate



Anne Chapman, Labor & Employment Law

business interest is "inherently a factual inquiry" that is "heavily industry and context specific." It further stated that while an interest in a referral source for specialists physicians may be a legitimate business interest, this will not necessarily always be the case. The Court noted that the situation is likely different where a referral is made to a "business" or "practice" as opposed to an individual doctor. Thus, where the referral is based on an assessment of an individual, the analysis is quite different than when the referral is to a company. While there remains uncertainty concerning the enforceability of non-compete agreements related to referral sources, it is clear that the prior argument that referral sources cannot be a legitimate business interest is no longer a defense to enforcement of non-competition agreements.

For more information on non-compete agreements or other labor and employment matters, please contact Anne Chapman at 941.748.0100 or achapman@blalockwalters.com. ■

The ability of an employer to enforce non-compete agreements is not always clear, and soliciting referrals from former employer's sources is also an uncertain area.



Please visit blalockwalters.com and sign up for our E-News to stay informed about pending Tax Reform

IRS withdraws proposed regulations for family owned businesses

BY JENIFER S. SCHEMBRI, ESQ.

As of October 20, 2017, small business owners wishing to make succession plans for their companies can rest a little easier, as the IRS withdrew proposed regulations under Section 2704 of the Internal Revenue Code.

The proposed regulations issued by the IRS, if finalized, would have substantially impacted the estate and gift tax planning for family owned businesses, as the regulations provided that no discounts would be available in valuing a closely held company, including discounts currently available for lack of marketability and lack of control.

The proposed regulations were withdrawn as a result of Executive Order 13789, issued in April 2017, which was designed to reduce regulatory tax burdens. The IRS' decision was made in light of commentators concerns related to the regulation's potential negative impact on accu-

rate valuations of family owned businesses and the possible greater transfer tax liability increasing financial burdens on taxpayers.

If you would like to discuss this important update or any other estate planning matters, please contact one of our attorneys. ■



Florida House Bill 7109: Small reduction in the business rent tax

As the only state in the country to impose a standard, statewide sales tax on the rental of commercial real estate (i.e., the business rent tax), Florida has enacted a reduction in the business rent tax.

In May, 2017 House Bill 7109 was approved by the Florida legislature and signed by Governor Scott reducing the business rent tax from 6% to 5.8%, effective January 1, 2018. This reduction in the business rent tax projects to save businesses across Florida \$25.4 million next fiscal year and \$61 million when the reduction in the business rent tax is in effect for a full year.

This reduction in the business rent tax will only apply to leases beginning following the effective date of January 1, 2018. House Bill 7109 specifically provides that the tax rate in effect at the time that the

tenant occupies, uses, or entitled to occupy or use the commercial real estate is the tax rate applicable, regardless of when a rent payment is due or paid. As such, the reduction in the business rent tax will not apply to current rentals of commercial real estate for periods before January 1, 2018.

Although House Bill 7109 will reduce the business rent tax starting January 1, 2018, House Bill 7109 will not have an effect on the local option sales tax, which each county in Florida has the right to impose in 0.5% increments. Because Manatee and Sarasota counties both have exercised their right to impose the local option sales tax, with both increasing their respective sales tax from 6 to 7 percent, House Bill 7109 will reduce their respective business rent tax from 7 to 6.8 percent, effective January 1, 2018. ■

Hurricane tax credit available to eligible businesses

BY KRISTEN H. EHRlich, ESQ.

Businesses that were closed after Hurricane Harvey, Irma, or Maria may be eligible for a business credit under IRC § 38(b) for payments made to employees while the employer's business was inoperable.

The Disaster Tax Relief and Airport and Airway Extension Act of 2017 provides an employee retention tax credit for employers affected by Hurricane Harvey, Irma and Maria equal to 40% of certain qualified wages (up to \$6,000 per employee) paid to an employee whose

principal place of employment was in a federally designated hurricane disaster zone.

For an employer to be eligible for the tax credit, the employer needs to have conducted an active trade or business on a specified date (August 23/Hurricane Harvey, September 4/Hurricane Irma and/or September 16/Hurricane Maria) in the hurricane's disaster zone which was inoperable after the hurricane and before January 1, 2018, as a result of hurricane damage. ■

Blalock Walters Tax Team

Our Tax Law team makes a difference in the lives and businesses of our clients by providing practical tax solutions to fulfill our clients' planning goals.

As our federal tax laws continue to evolve, our tax attorneys provide up-to-date tax advice and planning to our individual and business clients in all phases of estate and gift tax and business planning, from formation through operations and in transactions.

In addition to federal tax laws, many clients are also faced with state taxes, such as merger, sale and acquisition sales taxes and documentary stamp taxes, and our attorneys assist our clients in connection with Florida's state law tax system.

Working together with our Estate Planning attorneys, we focus on creating estate plans that both satisfy our clients' objectives and provide tax efficient planning for estate, gift, generation skipping and income taxes. ■

Ehrlich broadens firm's tax law practice group

We are pleased to welcome Kristen H. Ehrlich to our growing Tax Law practice group. With the growth in our tax and estate planning practice groups, Kristen's experience and knowledge will provide increased depth and support to continue to serve our clients.

Kristen practices in the areas of estate planning, including trust and estate taxation, as well as business tax planning and Florida sales tax. She works with individuals and families together with corporations, partnerships, limited liability companies, and joint ventures. Kristen is experienced in developing solutions to sophisticated income and tax planning, complex corporate structuring, business mergers and acquisitions, and financial transactions.

Kristen joins the firm from Ernst & Young in Boston, where she was Transaction Tax Senior Associate, focusing on mergers and acquisitions in the life science sector. Kristen earned a Juris Doctor from Stetson University College of Law and received her Master of Laws (LL.M.) in Tax Law/Taxation from Boston University where she graduated second in her class. ■



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Exit planning for small and mid-sized businesses

BY MATTHEW J. LAPOINTE, ESQ.
AND MELANIE LUTEN, ESQ.

Many business owners have only a vague idea of how they will exit from their current businesses. They have a general notion that when the time is right they will sell their business and retire or that their children will take over the business someday. Many business owners don't realize that they need to plan their exit strategy well in advance.

A good exit plan requires a comprehensive approach, including estate planning, entity planning (that is, appropriate formation documents and restrictions on the transfer of ownership interests in the entity), tax planning and insurance planning. Early planning is essential for a number of reasons. A business may not have good vendor and customer agreements or good documentation and protection of intellectual property. The business might not have enforceable non-competition agreements with key employees. All of these agreements build value and a buyer will look elsewhere if they are not in place. Early planning is essential not only to assure that you get the best value for your business, but also because planning and executing an exit from a business takes a remarkable amount of time. From initially deciding to explore exiting to finalizing the transition, the process can take from three to five years or more. Having a realistic timeline when you begin the process will help keep stress low and goals feasible.

Before we get started, let's define some of the terminology used in this article. The words "exit planning" or "exit strategy" refer to the business owner's departure from the business and the process of converting his or her investment in the business into cash. The words "succession planning" or a "succession plan" refer to the steps that a business owner puts in place to ensure the continuation of the business after he or she leaves. Thus, a good succession plan is important to a successful exit strategy, especially if the business owner self-finances part of the new owner's acquisition.

There are several ways for a business owner to exit his or her business: internal succession and sale, external succession by sale or merger or liquidation and dissolution. This article will provide a brief overview of these options and will conclude with a list of issues to consider when planning your exit and a checklist of steps a business owner should take to start the exit planning process.



INTERNAL SUCCESSION (STOCK SALE OR ASSET SALE)

An internal succession is often a business owner's first choice, particularly if the business is family-owned and operated. An "internal" succession refers to a transfer of ownership to a person or group of people who are already involved in the business – either family members or long-term employees. This process allows the business to continue to provide employment to the people the owner knows and cares about. With an internal succession, however, the owner needs

to view potential successors with a dispassionate eye and must examine carefully how such a transfer would work financially. Employees and second generation family members often lack the financial means to pay cash for the business and they may look to the business itself to finance the purchase. The owner should also be mindful of internal dynamics among business personnel, which can lead to disgruntled employees who feel excluded from the process. Before putting in place

agreements for an internal succession, it is important for the business owner to "road test" the prospective successors by providing them with increased responsibilities and closely evaluating their performance. It is in no one's interest for the business to fail after the transfer, especially if the business owner is being paid out over time.

The transfer of ownership can be accomplished through a stock sale or an asset sale, although a stock sale is more common with an internal succession. When a family business is involved, the lawyer for the business will work closely with the owner's estate planning attorney to minimize exposure to the estate tax. When the successors are the children of the owner, the owner may decide to use a combination of gifting and sale of ownership interests to the next generation. When the estate tax is not an issue (in 2017, an individual can transfer \$5.49 million without incurring estate taxes, while a married couple can transfer \$10.98 million), sometimes the transfer is accomplished through an asset sale. There are complicated tax issues at work here, and it is important to review various scenarios with a tax lawyer or an experienced CPA.

INTERNAL SUCCESSION (ESOP)

Another internal succession strategy is an Employee Stock Ownership Plan or ESOP (pronounced "ee-sop"). An ESOP is a kind of employee benefit plan, similar in some ways to a profit-sharing plan. In a common ESOP exit plan, a company sets up a trust fund. The trust

borrow money, which it uses to buy the shares of the existing owners. The company then makes tax-deductible contributions to the ESOP trust to repay the loan. The ESOP trust allocates the shares to individual employee accounts. Allocations are made either on the basis of relative pay or some other formula permitted by the applicable federal rules. As employees accumulate seniority with the company, they acquire an increasing right to the shares in their account, a process known as vesting. Employees must be 100% vested within three to six years, depending on whether vesting is all at once (cliff vesting) or gradual. When employees leave the company, they receive their stock, which the company must buy back from them at its fair market value (unless there is a public market for the shares). Private companies must have an annual outside valuation to determine the price of their shares.

An ESOP is a very complex arrangement that can be costly to establish and manage. It is important to seek the advice of qualified advisors early in the process to determine if it makes sense to pursue this strategy. The legal, accounting and valuation expenses involved in setting up an ESOP are substantial -- between \$50,000 to \$100,000 depending on the size of the business and complexity of the legal, tax, accounting and valuation issues. While an ESOP is not appropriate for many businesses, it can be an excellent exit strategy for the right business.

EXTERNAL SUCCESSION (MERGER)

Sometimes, a business owner will look to merge his or her business with a complementary business with a proven management team to serve as the business owner's successor. Such a situation can prove to be a great opportunity for the business owner planning his or her exit. In such a "cash-out merger," the owner of the target firm is paid in cash for his or her stock. Depending upon the size of the business, a business broker or an investment banker can be helpful in finding the right merger partner. Always consult with your attorney before entering into any arrangement with a business broker or investment banker and have your attorney review the contract before you sign it.

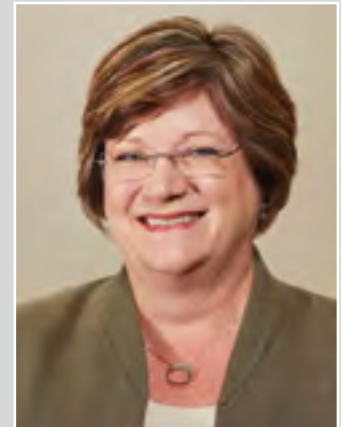
An external succession through merger takes time and requires a back-up plan if the right merger partner cannot be found. Here, especially, internal company dynamics can undermine the success of the plan and should be considered carefully. It is also important to consider whether the business cultures of the entities are compatible.

EXTERNAL SUCCESSION (STOCK SALE OR ASSET SALE)

The sale of a business may be accomplished as a sale of the ownership of the business (stock sale) or the sale of the business assets (including the name, customer lists and other important attributes of an ongoing business). There are tax considerations and liability con-



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siderations that cause sellers to favor stock sales and buyers to favor asset purchases. For example, asset sales can be structured to allow buyers to acquire the business without pre-acquisition liabilities and to allocate part of the purchase price to certain assets, giving them a stepped up tax basis and enabling the buyer to take higher depreciation deductions. Allocation of the purchase price for tax purposes is an important part of the negotiation, because what benefits the buyer may harm the seller. It is important to consult a good CPA early in the process.

When selling the business is the exit strategy, the succession plan will sometimes include the former owner staying on as an employee for a period of time, which many former owners find difficult. In addition, the buyer will almost always impose some kind of non-competition agreement, so business owners considering a sale need to be sure they are ready to retire or are willing to leave their industry -- at least for a period of time. A business broker or investment banker can help the business owner find a suitable buyer. As

noted above, it is important to consult your lawyer before signing any agreement with a broker or investment banker.

CLOSING THE BUSINESS (LIQUIDATION/DISSOLUTION)

Many small business owners simply close their business when they are ready to retire. They sell off the assets, pay off the liabilities, collect the receivables and take the net proceeds. The business can formally dissolve by filing articles of dissolution or it can be administratively dissolved if it fails to file its annual report with the Secretary of State's office. Liquidation is the least lucrative exit strategy because the seller gets no value for the goodwill built up in the business. However, it may be appropriate for those businesses that are typically valued based on accounts receivable at the time of sale. Liquidation and dissolution may also be appropriate if the alternative is a stock sale or asset sale in which the buyer requires a significant indemnification

From initially deciding to explore exiting to finalizing the transition, the process can take from three to five years or more. Having a realistic timeline when you begin the process will help keep stress low and goals feasible.

obligation from the Seller. In this context, “indemnification” means that the seller retains responsibility for liabilities associated with the business even after it is sold.

Business owners can and should evaluate the liquidation value of their assets (including accounts receivable) and compare that to the potential value achievable in the sale of an ongoing business (with the “goodwill” in the business name and reputation). If the values are close, or there is no ready market for your business, your best exit strategy may be liquidation.

Liquidation and dissolution are not risk-free, however. In particular, Florida law states that participating shareholders can be held personally liable for claims against the business if they receive “improper” distributions in liquidation. Improper distributions in liquidation are distributions made without adequate provision for existing and reasonably foreseeable debts, liabilities, and obligations of the company. Accordingly, careful planning is required even with the liquidation/dissolution option.

ISSUES TO CONSIDER WHEN PLANNING YOUR EXIT

What are your goals and what is your timeline?

Business owners should begin identifying and prioritizing goals in connection with their exit strategy as early as possible. Important questions to consider include: What are your anticipated financial needs upon leaving your business? What is the actual amount (after taxes and costs) that you expect to realize? Is that enough for you? Is it important to you that the business continues in existence? In what form should it continue? Do you want or are you open to continued involvement in the business? What do you want to see happen in connection with your employees, including family members? In connection with your customers? In connection with your community?

What is your business really worth?

It is a good idea to get a realistic view of what ongoing businesses sell for in your industry sector so you can better evaluate your financial expectations. If you understand what factors are important to achieve value in your industry you can work to improve the value your business ultimately will achieve. However, valuing closely-held businesses is difficult because the fair market value is not readily apparent. Unlike publicly traded companies there is no active market for the ownership interests of privately-held businesses. A formal valuation by a business appraiser can be expensive and impractical for many small businesses, but business appraisers will often provide a less formal “calculation report” at a lower cost.

There are many ways to value a business. Typically business appraisers consider relative valuation (comparing your company to companies with similar operating characteristics) or a discounted cash flow analysis (based on the present value of the future stream of free cash flow). Often the valuation calculation is based on multiples or ratios considering important financial metrics like revenues, earnings before interest and taxes (EBIT), earnings before interest, taxes, depreciation, and amortization (EBITDA), and net income. It is helpful for owners to

evaluate these metrics to try to “ballpark” the value of their entity, bearing in mind that a formal valuation may be necessary prior to sale.

How will you manage your ongoing business?

It is a big mistake for a business owner contemplating his or her exit to lose focus on the current operations of the business or to prematurely release news of his or her exit planning. Both are likely to cause business deterioration. If key employees feel insecure, they may leave. Customers concerned about a company’s long-term viability may withdraw their business or slow down bill payment. Vendors may change the terms of credit. All these issues can cause the value of the business to deteriorate. Careful advance planning, such as securing restrictive covenants from key employees, vendor agreements that include multiple options exercisable by the seller and customer agreements that permit the transfer of the business can be very useful to have in place prior to seeking a potential buyer.

Business owners should develop information management strategies early in the succession planning process, identifying whether, when, and on what terms to let people know of the planning process. At some point, business owners may wish to provide employees with incentives to give them a vested interest in maintaining profitability and confidentiality, through phantom stock, performance-based bonuses or bonuses contingent upon the successful completion of a sale or merger. Information control is important. While employee confidentiality agreements are helpful as a general deterrent, they are ultimately of limited assistance when a premature disclosure actually occurs. By that point, the damage may be difficult to address.

You weren’t considering selling, but you’ve been approached by a buyer, and the deal looks good. What should you do?

If you are being courted by a “consolidator” (a group, often backed by private equity, that purchases multiple companies in the same business or industry), keep in mind that these are skilled and experienced buyers. You should assemble a team of advisors including a valuation expert, experienced lawyer and a CPA experienced in mergers and acquisitions. Take care to protect your customer and employee information as long as possible and obtain a strong confidentiality agreement from the prospective buyer. Do not sign anything, especially a letter of intent, before having it reviewed by your lawyer.

CONCLUSION

Getting an appreciation for possible successors and determining which method of succession is best for your company is critical to meeting exit strategy goals. It is critical to have an experienced team to guide you through the process. As odd as it may sound, succession planning should begin the moment one embarks on forming a business. However, very few entrepreneurs do that, even though proper planning and decision-making can help reduce ultimate tax liability, ensure achievement of maximal value for the business, and generally ease the transition out of ownership. A good succession plan is essential for a smooth and successful exit. Now is the time to start the planning process. ■



A Succession Planning Checklist

The sophistication and complexity of a business succession plan will depend upon the owners' personal financial means and needs, the size and complexity of the business and the succession method (internal, external, merger, sale or liquidation). Therefore, while not all of the items on the following checklist may apply to your particular situation, the checklist will provide you with a framework within which to think about your own succession plan.

- Assemble a good team of advisors, including a business lawyer, estate planning lawyer, and CPA.
- Current owners should review estate planning documents with their attorney. Consider whether a program of gifting stock to the next generation is advisable in light of the next generation's involvement in the business and the value of the business.
- When the time is right, communicate your wishes regarding the future of the business to the next generation, whether or not they are involved in the business.
- Review the organizational documents of the business, including any Shareholders' Agreement, Cross-Purchase Agreement or Stock Redemption Agreement to ensure that they comport with the succession plan.
- Review vendor, customer and employment agreements.
- Make sure that at least one other person in the business has authority to make necessary banking transactions in the event of the unavailability of the primary bank contact.
- Consider the tax planning alternatives and methods of funding applicable taxes (estate taxes, income taxes, etc.).
- Review Insurance Portfolio: disability insurance, life insurance (to provide working capital during transition or to fund purchase of deceased shareholder's stock).
- Review retirement plans: deferred compensation, 401(k), profit-sharing plans, annuities
- Establish a policy for family members entering or working in the business. The policy should cover criteria for entry into the business (such as previous work experience or education requirements) and ongoing criteria which must be met to keep a job with the family business (such as satisfactory performance reviews). Different criteria may apply to employment by the family business vs. ownership of the family business.
- Consider establishing a formal compensation system for higher-level employees (including family members). Such a system could include bonuses of cash or stock.
- If considering an internal succession, establish a mentoring or training program for the middle managers to prepare them for ultimate management of the business.
- Consider the ongoing role of existing owners as advisers or consultants during and after the transition (either paid or unpaid).

If you have questions about this article or would like to speak with Matt and/or Melanie about your business exit strategy, please call 941.748.0100 or email Matt at mlapointe@blalockwalters.com or Melanie at mluten@blalockwalters.com. ■



Making a Difference...



Breitinger elected BOD chair of Realize Bradenton

Realize Bradenton, a nonprofit organization that promotes redevelopment and economic growth in downtown Bradenton, elected health care attorney Ann Breitinger as Chair of its board of directors. The board takes action on critical issues and opportunities from a mission-based perspective to build community and economic development in downtown Bradenton. ■



Ann Breitinger

Fleece on Manatee Community Foundation BOD

Manatee Community Foundation, whose mission is to connect the charitable interests of donors with needs in our communities, has selected Jonathan Fleece to serve on its board of directors.

“In Jonathan, Manatee Community Foundation has found a thoughtful, connected and enthusiastic leader who understands the value of building community together,” said Susie Bowie, Manatee Community Foundation Executive Director. “We look forward to his work as a board leader and to our continued legacy of partnership with Blalock Walters.” ■



Jonathan Fleece

\$19,000 raised for Manatee County Sheriff's Office



The firm proudly sponsored the Wagner Realty 2017 Golf Classic, which raised over \$19,000 money for Manatee County Sheriff's Office. The tournament was held at Bradenton Country Club. **The Blalock Walters foursome was comprised of Jeremy Young, Fred Moore, Stephen Perry and Matthew Arcari.** ■

Robinson volunteers at Meals on Wheels PLUS

Will Robinson delivers hot, nutritious meals to seniors and disabled residents in need in Manatee County. As a long-time supporter and former chairman of the board of Meals on Wheels PLUS, Will helps make a difference through volunteering his time. **Meals on Wheels PLUS depends solely on its volunteers to deliver daily meals to seniors in need. If you would like more information on volunteering, please call 941.747.4655.** ■



Over \$3,000 raised for Cheers for Charity

The firm had fun supporting Cheers for Charity's "Summer in the Keys" fundraiser at 3 Keys Brewery in Bradenton. Amanda Tullidge, Cheers for Charity co-founder, and members Marisa Powers and Ann Breitinger, were bartenders with a mission to raise money. Ten-percent of proceeds and all tips, totaling over \$3,000, were donated evenly to four deserving, local non-profit organizations: Visible Men Academy, The Mark Wandall Foundation, Vintage Paws Sanctuary, Inc., & Family Network on Disabilities ■

More than \$3,000 was raised and donated to four local non-profits at the Cheers For Charity Summer in the Keys fundraiser.

Photo: Peter Acker Photography





BEHIND THE *Suit*

Matt Plummer, Real Estate Attorney
Practice Group Leader of Real Estate, Land Use and Local Government



On the weekends, I enjoy spending time with my wife, Nicole, and kids, Lily and Luke. I must admit, Sundays in the fall, my guilty pleasure is Fantasy Football, which fortunately my wife tolerates (when we win).

What was your first job? My Dad told me I had to get a job one summer or get my real estate license, so I worked for a moving company. I didn't have to go to the gym that summer (baby grand pianos are heavy), but when the next summer rolled around, I was more than eager to get my real estate license, which has been beneficial in my career.

What motivates you to work hard? As Cliff Walters told me my first day at the firm, one of our jobs is to take the monkey off our client's back and make it our own. In that vein, when I take on a matter, I make the client's issue my own, which is motivation in itself.

What has been your most adventurous vacation?

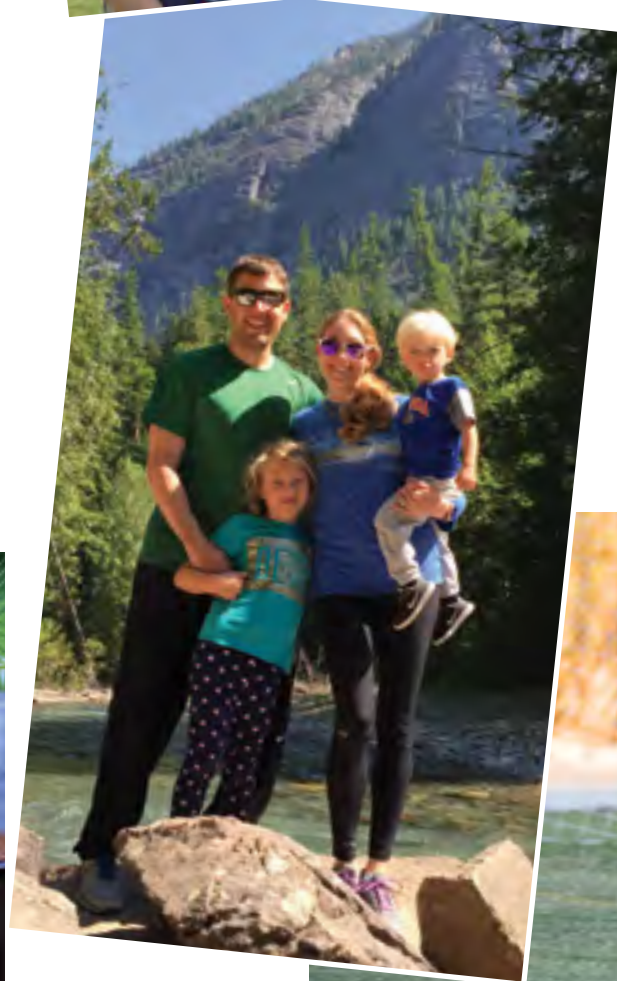
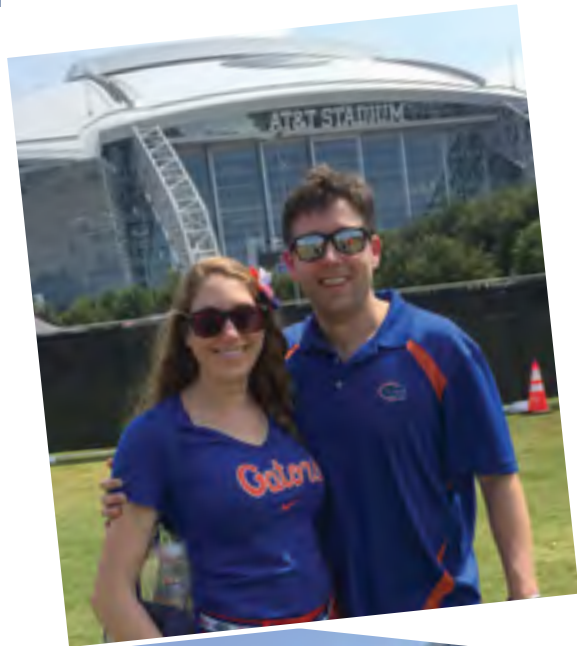
Riding mules to the bottom of the Grand Canyon and spending the night at Phantom Ranch. I was only 10, but I still remember the experience like it was yesterday. Nothing like putting your life in the hands of a mule who likes to straddle the edge of the path (because the footing is more secure there).

My hidden talent is... carnival games. I have filled a whole storage room with life size stuffed animals. One of the first dates with my wife was a group date at Busch Gardens. I looked pretty good when her friend showed her the small stuffed animal her boyfriend had won, and my wife responded with the life size dolphin taking up two seats in the car.

What is your proudest accomplishment? Marrying my wife. Not to get too sappy, but she is the rock behind our family and is the reason I can do what I do. *Thank you Nicole!*

If you had a warning label, what would it say? Don't make me mad. It takes a lot to really get me truly upset, but I am told I am not someone you want to be around when that happens.

What is your favorite childhood memory? Playing catch out in the front yard with my dad (even though my mom claims she taught me how to throw). I am looking forward to doing the same with my son as he gets older. ■



Top: Matt and wife, Nicole, cheer on the University of Florida Gators.

Center: Matt and Nicole, daughter Lily and son Luke enjoy a family vacation to Glacier National Park in Montana.

Bottom: Matt plays soccer at The Center of Anna Maria Island.

About Us...



Clifford Walters



Charles Johnson



Matthew Lapointe



Robert Blalock



Gregory DeMeuse

Four selected to Best Lawyers in America® 2018

Four attorneys have been selected by their peers for inclusion in The Best Lawyers in America® 2018. **Clifford L. Walters, III** has been selected by his peers for inclusion in the field of Real Estate Law; **Charles F. Johnson** was selected in the practice area of Real Estate Litigation, **Matthew J. Lapointe** was selected for Corporate Law, and **Robert G. Blalock** was selected for Trusts and Estates.

A listing in Best Lawyers is widely regarded as a significant honor conferred on a lawyer by his or her peers. The lists of outstanding attorneys are compiled by conducting exhaustive peer-review surveys in which tens of thousands of leading lawyers confidentially evaluate their professional peers. ■

DeMeuse joins firm, expanding real estate practice

We are pleased to welcome attorney **Gregory S. DeMeuse** to the firm. Greg focuses his practice in real estate, land use and local government law. His real estate practice focuses on commercial and residential transactions, commercial leasing and residential real estate. In the areas of local government and land use law, he serves as counsel to a wide variety of local government entities, including municipal, school district, community development district and interlocal government. He also represents private clients in all aspects of the permitting and development process.

Greg received his Juris Doctor from Stetson University College of Law, where he participated in the Stetson Honors Program and received Highest Grade Distinctions in Contracts, Research and Writing,

Commercial Transactions, and Remedies. He was honored to serve as an intern to the Supreme Court of Florida with the Honorable Justice Barbara J. Pariente.

“The firm is thrilled to have Greg join our real estate practice area,” says Matthew Plummer, real estate practice group leader. “This area of law continues to be a critical and growing component of the firm’s services. Greg’s skills, personality and commitment to our community make him a perfect addition to the Blalock Walters team.” ■



Handsome little bundle of joy!

We welcomed the newest member of the Blalock Walters family August 23. Health care attorney Ann Breitingner and husband AI are proud new parents of their baby boy Karl George Breitingner. ❤️

Blalock earns Boys Scouts of America top honor

Robert G. Blalock, one of the area's most respected community leaders, has been named the 2017 Distinguished Citizen "Good Scout" of the Year by the Boy Scouts of America (BSA), Southwest Florida Council. The award was presented at its annual community gala event.

The Distinguished Citizen Award recognizes individuals who have rendered outstanding service to the community, state or nation. The award has been presented each year in Manatee County by the Southwest Florida Council BSA since 2011. **Former honorees include Dan S. Blalock, Jr. (2011), Joseph F. Kinnan (2012), Jerry L. Neff (2013), Patrick K. Neal (2014), The Bradenton Kiwanis Club (2015) and Clifford L. Walters (2016).**

Having joined the firm in 1964, Bob has served as President for almost 40 years. Bob graduated from Princeton University in 1960 with his Bachelor's Degree in Politics and earned his Juris Doctor Degree from University of Florida College of Law in 1963. He has distinguished himself in his chosen profession of law and has received numerous awards for his professional endeavors.

A life-long resident of Bradenton, Bob has served in various key leadership capacities in many community organizations over the years. Some of those include the Bradenton Area Economic Development Corporation, Southeastern Guide Dogs, Just for Girls, John and Mable Ringling Museum of Art South Florida Museum, Art Center Manatee, Manatee Players, Manatee Chamber of Commerce, New College Foundation, Florida West Coast Symphony (Sarasota Orchestra), United Way, and Anna Maria Island Community Center. Bob has been in a driving force in philanthropy in our community and was a founding board member in the establishment of the Manatee Community Foundation.

The Southwest Florida Council serves the seven-county Southwest Florida region which stretches the west coast of Florida from Everglades City to Bradenton. Over 1,500 youth and adults participate in the Scouting program in Manatee County.

Allen Butler, Dinner Co-Chairman: "I have had the honor and privilege of working with Bob on various endeavors for over 30 years. His integrity, his willingness to help his community and fellow man and his sound judgment have been a benefit to all he touches. The Boy Scout motto is, 'Be Prepared.' Bob is always Prepared."

Gene Fogarty, Dinner Co-Chairman: "The quality of life in Manatee County has been greatly enriched by Bob, and his leadership has benefitted the citizens of Manatee County; the distinguished citizen, Boy Scout "Good Scout" award, is richly deserved."

Dinner Co-Chairman, Bob Christopher: "Bob has inspired many in our community to serve in a significant manner while encouraging volunteerism and philanthropy of others through his example."



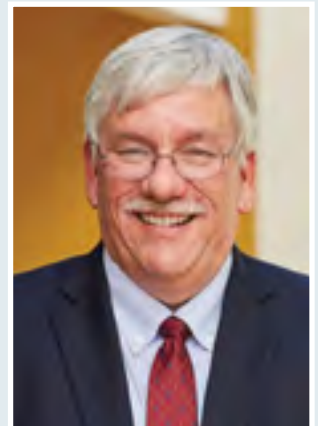
From left, Judge Gilbert Smith, Bob Blalock, Allen Butler and Greg Graham

Greg Graham Scout Executive and CEO, Southwest Florida Council, BSA: "Bob Blalock has demonstrated over his lifetime extraordinary integrity, character and civic-mindedness. He is an exceptional role model for today's Scouts and an outstanding example of the good works, values and service that the 'Good Scout Award' is designed to honor." ■

Barnebey selected to 2017 Florida Super Lawyers

Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Mark Barnebey was selected to receive the honor in 2017.

Mark is Florida Board Certified in City, County & Local Government law and has over three decades experience in the areas of local government, land use and real estate law. Mark represents a variety of governmental bodies, including counties and municipalities, special districts, and community development districts, and land use clients. Barnebey is also AV® Preeminent™ Peer Review Rated, Martindale-Hubbell.



Mark Barnebey

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys. ■



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WE MAKE A DIFFERENCE

Blalock Walters Named 2017 Small Business of the Year by Manatee Chamber of Commerce in August

BY JAMES A. JONES, JR.
BRADENTON HERALD

The 2017 Manatee Small Business of the Year Awards Luncheon recognizes small businesses for "quality and excellence" as exemplified by growth, productivity, customer service, job creation and overall contribution to the community. The Manatee business community is supported by many deserving non-profit organizations that help strengthen our business environment and improve our quality of life.

The Manatee Chamber of Commerce is pleased to announce the four winners for 2017: Arts & Eats Restaurant and Gallery in the under \$250,000 revenue category, Williams Wealth Management Group in the \$250,000 to \$1 million category, Blalock Walters, P.A., in the more than \$1 million revenue category and Pace Center for Girls in the non-profit category.

Jonathan Fleece, managing partner of Blalock Walters, P.A., a company noted for its ethics and leadership on numerous boards and charitable organizations, led most of his staff onto the dais after his company was announced as a small business of the year.



William Robinson and Jonathan Fleece

"To be in such amazing company with businesses and people who dedicate every day to making the community better is truly humbling," Fleece said. "Small business is big business and is the backbone of our community, our state and our great nation."

Fleece, well known for his love of quotes, borrowed one from a Facebook friend who posted that being a candle is not easy. In order to give light, one must burn.

"All of us here today and for nearly 100 years have a burning passion to make a difference in the lives of our clients, our business, our community and our friends," Fleece said.

Fleece paid tribute to former Chamber President Bob Bartz, who died in February at age 65. Bartz built the Manatee Chamber of Commerce into a powerhouse of 2,100 members, helping it win honors as Florida Chamber of Commerce of the Year four times and national Chamber of Commerce in 2007.

Fleece expressed confidence that Jacki Dezelski, the new president, would continue to lead the chamber in an outstanding way. ■