RIW
RUBERTO, ISRAEL & WEINER

Hospitality and Retail Services Group Newsletter

At Your Service

May 2017

In this issue...

Upcoming Industry Events

Around the Restaurant Industry in 160 Minutes
Wednesday, May 31, 2017 | 2:30pm
Bethany Grazio will be presenting at this event.

Boston Magazine's - The Cue & Battle of the Burger
August 15-16, 2017 | Cruiseport Boston | www.bostonmagazine.com

Boston Magazine's - Best New Restaurants
October 2017 | www.bostonmagazine.com
Kelly Caralis will be presenting at this event.

Taste of Boston
November 2017| www.bostonmagazine.com

Alcohol Licensing: Legal Updates and Insights

Adam Barnosky
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There have been several recent developments in the alcoholic beverages industry which affect regulatory oversight, restaurant operators, brewers, non-profits, and more. Here is a rundown of the latest developments.

New Commissioner to Head the Massachusetts Alcoholic Beverages Control Commission (ABCC). January, Massachusetts State Treasurer Deborah Goldberg appointed Jean M. Lorizio Commissioner of the ABCC. Lorizio will serve as Chair of the Commission and replaces former Commissioner Kim Gainsboro, who left the agency after ten years to work in the private sector. Lorizio, an attorney, most recently served as Executive Secretary and Legal Counsel for the Licensing Board for the City of Boston. Lorizio will be in charge of agency oversight, licensing compliance, and administrative hearings and appeals.

Alcohol Licensing: Legal Updates and Insights (cont.)

More Liquor Licenses may be coming to Boston. A new proposal by Boston Mayor Marty Walsh would grant the City of Boston 152 new non-transferable liquor licenses. The initiative, co-sponsored by city councilor Ayanna Pressley, is part of an ongoing effort to attract new businesses and restaurants in underserved neighborhoods throughout Boston, including Dorchester, East Boston, Hyde Park, Jamaica Plain, Mattapan, Mission Hill, and Roxbury. While a majority of the licenses will be earmarked for these underserved neighborhoods, thirty could be issued downtown in Back Bay, Beacon Hill and the North End over a three year period. This proposal still requires the approval of the Boston City Council and Massachusetts State Legislature.

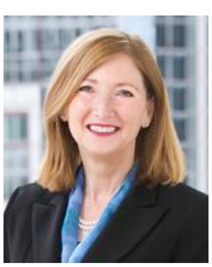
Massachusetts Liquor Laws under Review. An "Alcohol Task Force" has been created by the state treasurers office (which oversees the ABCC) to examine the legal and regulatory framework governing the alcoholic beverages industry in Massachusetts. The task force includes an independent group of professionals to provide an assessment of the current climate and advise on any improvements necessary to execute the business of alcohol regulation. A report will be made to Massachusetts State Treasurer Deborah Goldberg within six months of convening and after input from relevant stakeholders, including the public, business owners, attorneys and other industry leaders.

City of Boston Now Issues Permits for BYOB: In early 2017, Boston issued its first permit for BYOB, which will be allowed in certain neighborhoods throughout the city. A restaurateur is required to apply to the Boston Licensing Board and, if approved, will cost $400 annually and allow diners to bring in their own wine and beer, hard cider and sodas. Hard liquor is not part of the permit and BYOB is limited to the hours of 5-11 p.m.

Non-Profits Allowed to Accept Alcohol Donations. In the past, a non-profit could not accept donations of all varieties of alcoholic beverages for use at fundraising events. However, a last minute bill filed at the end of the Massachusetts Legislature's 2015-2016 session changes the prohibition, allowing duly organized Massachusetts non-profit organizations to accept donations of any type of alcoholic beverages from any person or legally operating manufacturer, wholesaler, or package store, so long as the beverages are served at fundraising events for the benefit of the non-profit.

Adam is an attorney in RIW's Hospitality & Retail Services, Commercial Real Estate, and Corporate & Business Practice Groups. Adam can be reached at arb@riw.com or (617) 570-3519.

Business Succession Planning for the Closely-Held Business Owner



Deborah Pechet Quinan
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A well-crafted business succession plan requires careful consideration, which can seem daunting to the devoted business owner who has limited available time. However, when considering the long-term benefits of a thoughtful business succession plan, and the potential risks of not having one in place, it quickly becomes apparent that consulting with qualified advisors skilled in this specialized area of estate planning is well worth the owner's efforts.

The Costs of Inadequate Planning

Few business owners are comfortable with the idea of their assets passing to the government in the form of taxes. Without an effective estate and business succession plan in place, the government may be entitled to a much larger share of the value of the deceased owner's business than necessary. This reduces the assets left to the decedent's heirs, and may require surviving family members to sell the business or other illiquid assets to provide a source of payment for estate taxes.

Establishing an effective succession plan during lifetime also reduces potential familial conflict after death, as expectations for the transition of the business have been set, and family members are well provided for.

In addition, as discussed in more detail below, where there are multiple business owners, a carefully crafted succession plan can allow for seamless continuation of business management after a co-owner's death.

Relevant Estate and Gift Tax Law

In considering the benefits of effective estate and business succession planning, it is important to keep in mind the following estate and gift tax facts:

- Current law sets the federal estate, gift and generation-skipping transfer ("GST") tax exemptions at five million dollars adjusted for inflation (currently $5,490,000) for each living individual and decedent. The Massachusetts estate tax exemption is set at $1,000,000 under current law. These potential estate taxes can approach a 50% combined federal and Massachusetts rate.
- There is an unlimited federal and Massachusetts marital deduction under current law, meaning that married couples can transfer assets to each other free of federal and Massachusetts estate tax during life and at death (assuming the recipient spouse is a U.S. citizen), and free of federal gift taxes. Generally, trusts are used to minimize federal and Massachusetts estate taxes, and to utilize the marital deduction.
- The annual exclusion amount allows each person to gift up to $14,000 adjusted for inflation periodically ($28,000 for a married couple) annually to anyone free of gift tax, before consuming any of the donor's lifetime gift tax exemption amount.

With proper advance planning, the federal and Massachusetts exemption amounts can be fully utilized in the estate of each spouse, resulting in significant estate tax savings.

How Do I Accomplish My Estate Planning and Business Succession Goals?

For most business owners, planning goals include preserving the value of the business, ensuring that the surviving spouse and children are able to maintain their lifestyle, ensuring that children are treated equally when not all may be actively involved in the business, and minimizing estate taxes on this valuable, but illiquid, asset. There are multiple strategies available to the business owner in accomplishing these important goals.

Cross-Purchase Buy-Sell Agreement

If a business has two or more owners, establishing a cross-purchase buy-sell agreement obligates the deceased owner's family members to sell the business interest to the surviving owners. Funding the agreement with life insurance on the life of each owner provides immediate cash to the surviving owner(s) to complete the purchase of the deceased owner's business interest from his or her estate. Establishing irrevocable life insurance trusts ("ILITs") to own the policies significantly reduces estate taxes on the business owners' respective deaths, and provides ample liquid assets in trust for the benefit of the deceased owner's surviving spouse and descendants. Benefits of the ILIT structure include enhanced creditor and divorce protection, and shielding the future growth in the business's value from estate taxes in the estates of the surviving owners.

Obtaining an initial valuation of the business to determine the amount of life insurance needed to fund the agreement will be critical to determining the payment terms under the agreement. A combination of insurance death benefit and a promissory note is frequently used for this purpose.

Business Succession Planning (cont.)

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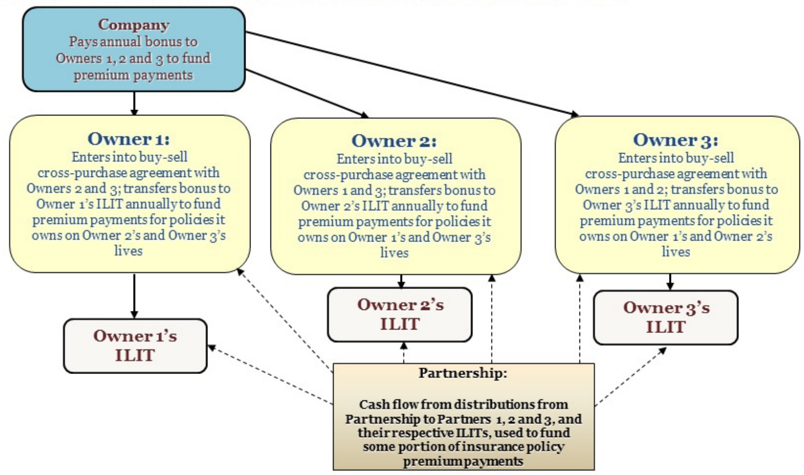
It is essential that a buy-sell agreement be coordinated with the owners' overall estate plans. Specifically, the agreement terms must provide adequate liquidity to fund the purchase of a deceased owner's business interest, and any transfer restrictions under the agreement should not preclude estate tax minimization planning. In addition, including an equalization clause in the estate plan to ensure that children are treated fairly may be necessary.

For an illustration of the basic elements of a buy-sell cross-purchase agreement, please see the flowchart to the right.

Cross-Purchase Buy-Sell Agreement (sample structure)

At death of each owner, surviving owners' Irrevocable Life Insurance Trusts ("ILITs") buy ownership interest from deceased owner's estate; life insurance policies and partnership interests in deceased owner's ILIT are sold to surviving owners' ILITs.



This article was co-authored by Deborah Pechet Quinan and Deborah Qualia Howe.

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Trademark Watch and Search Services

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Once a trademark registers, it becomes the responsibility of the Registrant to watch for potential infringers. Yet checking for potential infringers is often overlooked, leaving your business interests to chance. Registering your trademark provides protection, but neglecting to enforce your mark can weaken it. Still, many businesses don't have the time to check, and find watch companies too expensive. It is always frustrating to have an employee or other person point out a possibly infringing use.

While we still recommend Registrants be vigilant and keep an eye out for potential infringers, RIW is now pleased to offer its own internal watch and search services. We use highly sophisticated software, but at a lower cost than traditional watch and search reports. All watch and search services cover both domestic and international.

For more information visit www.riw.com/practice/intellectual-property/services or reach out to Stacey Friends directly at sfriends@riw.com or (617) 570-3578.

Restaurant Trends Seminar Recap

Ruberto, Israel & Weiner and The Boston Restaurant Group hosted our 25th Anniversary Restaurant Trends Seminar on Monday, April 24th at the World Trade Center in Boston. The overall theme “Look-backLookahead: Tradition +Innovation = A Successful Tomorrow” encompassed an all-star presenter list of restaurateurs & industry experts. With nearly 200 attendees, this has been one of the most successful seminars to date.

The net proceeds collected from ticket sales for this event were donated to The Greater Boston Food bank.

All of the event presenters from left to right: Donna Hood Crecca, Technomic; Ann Marie Escobar, Legal Sea Foods; Charlie Perkins, The Boston Restaurant Group; Eric Papachristos, TRADE, Porto, and Saloniki Greek; Andy Husbands, Tremont 647, Sister Sorel, and the Smoke Shop; Gordon Hamersley; Joanne Chang and Christopher Myers, Flour Bakery + Café, Myers + Chang; and Lou Katz, Chair of Hospitality & Retail Services Group, Ruberto, Israel & Weiner.

Left to right, Stephen Bonder, BlumShapiro; Chris Litterio and Stacey Friends, Ruberto, Israel & Weiner; and Amy Rubin, TripAdvisor.

Left to right, Gregory Kitowicz, City Winery; Stefano DeAngelis, Foolproof Brewing; and Adam Barnosky and Howie Altholtz, Ruberto, Israel & Weiner.

Marketing Corner

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Flexibility on Portion Size Could Pay Off

Your customers will pay you for the privilege of marketing your products to them.
It is not infrequent that a customer will see something on the menu which arouses their interest, but due either to unfamiliarity with the item, or a competing favorite, they are not ready to commit full-on. So when they ask, "can I get that as side just to try it", the first reaction should not be, 'sorry, that is not offered as a side'.

A better practice that could will pay off might be to allow them to have a smaller portion of that item, at a proportional price - even with a slight upcharge. This creates an opportunity to expand their exposure to your product line, and is likely to increase the chances of their coming back sooner than they might have otherwise. It also generates goodwill, by just making them feel better about your responsiveness.

A customer wanting to try more of your product line - and willing to pay , is a good thing. And it's worth figuring out a way to make it work.

RIW Client News

RIW client **Dan Kerrigan** to open Prairie Fire in Brookline.

Full Story:
http://www.bostonmagazine.com/restaurants/blog/2017/03/06/prairie-fire-brookline-steel-rye/

Congratulations to RIW client and Restaurant Trends Seminar Partner, **Charlie Perkins**, The Boston Restaurant Group, on being honored at this years MRA Awards Dinner with *Business Partner of the Year.*

Congratulations to RIW client **Wahlburgers** on being ranked 36th overall for Fast Casual magazine's "Hot 100" concept award.

RIW client **Keith Harmon**, We Live to Serve Consulting, featured in NPR article "Restaurants Try To Close Employee Wage Gap By 'Revenue Sharing'."

Full Story:
http://www.wbur.org/bostonomix/2017/03/21/restaurant-revenue-sharing

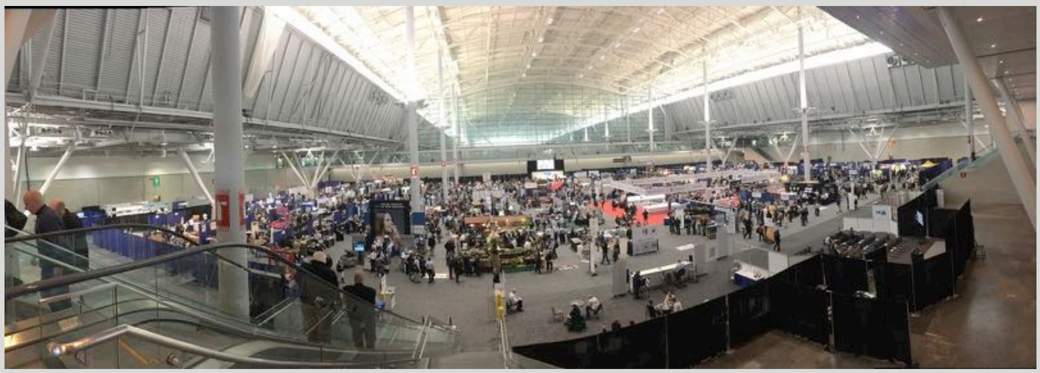
RIW client **Brassica Kitchen + Café** featured in Boston Globe spotlight.

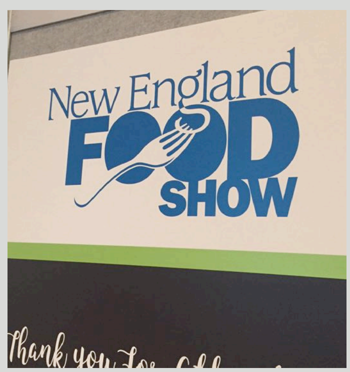
Full story:
https:/A/www.bostonglobe.com/lifestyle/food-dining/2017/03/06/brassica-kitchen-cafe-let-wild-rumpus-continue/ca8HtfLbLIgg6SelRa1nSO/story.html

RIW Events and Participation

Adam Barnosky attended the 2017 **Mass Lodging Association "Stars of the Industry"** event luncheon on Friday, April 7th.

Adam Barnosky attended the **New England Food Show** on Monday, February 27th at the Boston Convention and Exhibition Center.





The annual **MRA Awards Dinner** took place on Monday, February 27th at the Seaport Hotel & World Trade Center. In attendance from RIW was Chris Agostino, Adam Barnosky, Kelly Caralis, Kevin Freytag, and Lou Katz.

Michael Rosen and Adam Barnosky participated on panels at the **Bisnow Boston Restaurant Development Summit** on Thursday, February 9th at District Hall.

Michael moderated a panel on “Fenway: Boston’s Restaurant Capital” with panelists Patrick Renna, CFO, Wahlburger Restaurant, Sabrina Sandberg, VP of Marketing & Merchandising, Samuels & Associates, Paul Mancini, EVP of Business Operations, Trinity Building & Construction Corp., and Kenneth Feyl, AIA, NCARB, JD LaGrasse & Associates.

Adam moderated a panel on “Concept to Creation - Executing a Vision” with panelists Jack Huang, CEO, Dou-zo Modern Japanese Restaurant, Basho Japanese Brasserie, Basho Sushi Wholesale & Cater, and Shabumru Japanese Hot Pot, Jeremy Sewall, Chef & Partner, Island Creek Oyster Bar, Row 34, and Row 34 Portsmouth, and Ray Chung, Director of Design, The Johnson Studio at Cooper Carry.

Also in attendance were Howie Altholtz, Josh Bonneau, Kelly Caralis, Kevin Freytag, and Bethany Grazio.

Attorneys in RIW’s Hospitality and Retail Services Group have provided legal services to industry clients for over 30 years. Our attorneys organize seminars, lecture, write articles, participate in trade associations, and serve on Boards of Advisors for retail, food and hospitality industry companies.

For a full description of our Hospitality and Retail Services Group, including a list of representative clients, please visit our website at *www.riw.com*.

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