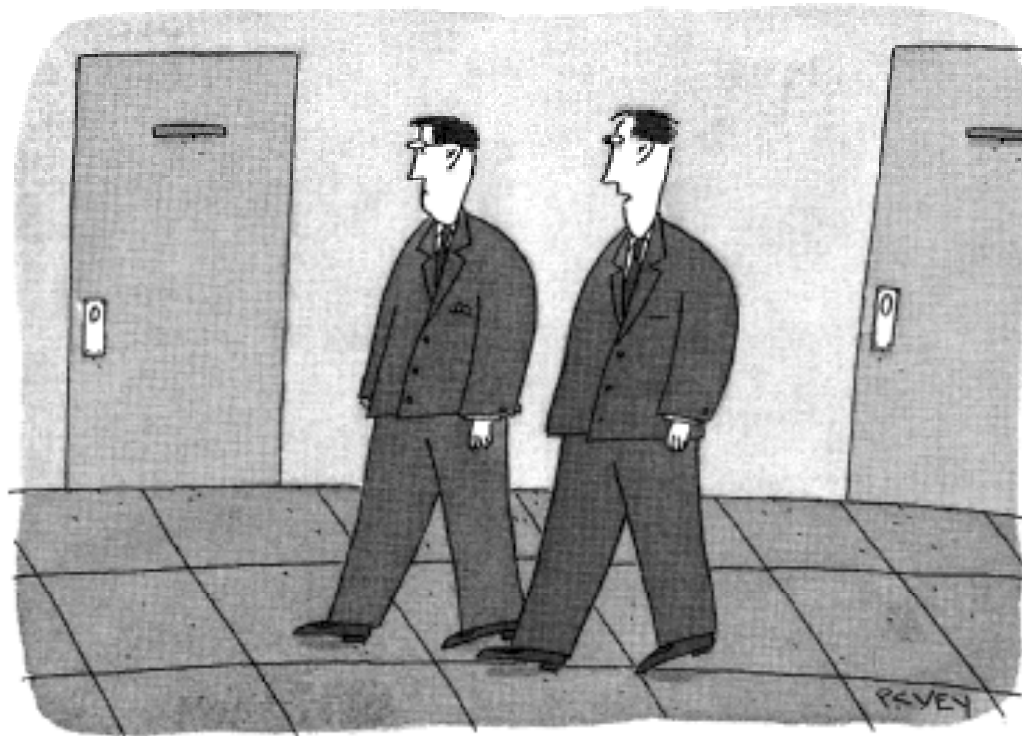


YOUR BUSINESS, YOUR LEGACY

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"What you lack in business savvy you more than make up for in owning the company."

What is Succession Planning?

- Identification of an appropriate exit strategy for the owner-manager of a business which addresses:
 - Management of the business
 - The financial situation of the owner-manager
 - The personal/family concerns of the owner-manager and family members
- Succession planning is broader than estate and tax planning





Why is Succession Planning Important?

- Largest asset of most owner-managers is their business – an appropriate succession plan can preserve that value
- Only 28% of family businesses have a succession plan
- Only 33% of businesses are successfully transferred from the first to second generation
- Only between 10% to 19% survive from the second to the third generation!
- \$10 trillion is due to change generational hands by 2020





Barriers to Succession Planning

- Fear of death
- Loss of power and control
- Inability to choose between children
- Lack of conflict resolution skills
- Leadership/ownership/control structures can address some of these challenging issues





What is the Succession Planning Process?

- Often involves working with a succession planning consultant
- Consultant focuses on fact-finding and family issues rather than on estate and tax planning issues
- Multi-step process



What is the Succession Planning Process? (Cont'd)

- Consultant's role:
 - Initial meeting with client to understand the structure of the business
 - Individual meetings with all family members to learn goals and issues
 - Meeting with advisors (lawyer, banker, accountant, broker, etc.) to identify potential succession, financing, estate and tax planning issues
 - Second meeting with owner and advisors to provide deliverables and discuss options
 - Final meeting with owner and family to review succession plan and to provide personal development plans for individuals



What are the Succession Options?

- Name a family member as successor
 - Often the preferred outcome
 - Consider estate equalization for non-participating children
- Appoint a professional manager
 - Does manager buy in or does current owner-manager keep full ownership?
 - Consider recruitment/training before ownership manager retires



What are the Succession Options? (Cont'd)

- Liquidate the business
 - A poor second choice to sale
- Sell the business in whole or in part
 - The ultimate “exit” strategy
 - Immediate results
 - Caps financial interest in the business
 - Eliminates the possibility of future family involvement
 - Valuation always a challenge
- Do nothing
 - Typically the worst option





Owner-Manager Succession Checklist

- Start planning early
- Encourage intergenerational teamwork
- Develop a written succession plan
- Involve family and colleagues in thinking and process
- Take advantage of outside advisors
- Establish a training/development process
- Plan for retirement
- Decide on a retirement date and stick to it





Owner's Succession Plan

- Tie in business succession plan with personal estate plan for owner





“Well, we’ve licked taxes—that just leaves death.”





Legal Considerations

- Control/ownership vs. economic interests
- Shareholder agreements





Control/Ownership vs. Economic Interests

- Trusts – trustee vs. beneficiaries
- Differential share terms for corporations
- Will – executor vs. beneficiaries
- Property and financial power of attorney



Differential Share Terms

- Private company share terms – a bundle of rights
- Can customize each of:
 - Voting or non-voting
 - Redeemable/retractable or not
 - Dividends - fixed, discretionary, cumulative or non-cumulative
 - Equity participation or not
- Flexible tool for estate freeze/succession planning situations
- Different generations of family can have different bundles of rights
- Founder - voting control (for a period of time) plus fixed value redeemable preferred shares
- G2 operator - equity growth common shares with some votes
- G2 non-operator - discretionary dividend shares to support lifestyle at founder's discretion
- Consider tax issues relevant to each class of shares



Family Trusts

- A legal relationship creating separation of legal ownership from beneficial ownership
- Trustees control the trust property for the benefit of the beneficiaries
- Frequently used to own common shares of a family business after an estate freeze
- Significant tax benefits to using a family trust (i.e. multiplication of the capital gains exemption, income splitting with dividends) that are beyond the scope of this presentation
- Non-tax reasons include:
 - Control of decision-making by trustees (or a principal trustee)
 - Creditor protection of trust property
 - Confidentiality/secretcy
 - Founder's cash flow requirements
 - G2/G3 cash flow requirements
 - Hindsight/ability to "melt" a freeze
 - Ability to transition value to family later in a manner chosen by founder (and likely unequally among G2/G3)





Shareholder Agreement

- An agreement among all of the shareholders of the business
- Addresses:
 - Governance of the business – who has day to day decision-making, what share ownership thresholds are required for important or fundamental decisions, etc.
 - Shareholder contributions – when and in what circumstances will the shareholders be required to contribute additional capital to the company



Shareholder Agreement (Cont'd)

- Restrictions on share transfers – keeps the company private and closely-held
- Rights of first refusal – gives the other shareholders the right to acquire shares of any shareholder wishing to sell to a third party on the same terms and conditions
- Sales on certain triggering events – death or disability of key shareholders (whether funded by insurance or not)
- Sales on notice – ie. buy-sell terms such as a “shotgun”





Shareholder Agreement (Cont'd)

- Confidentiality provisions
 - Non-competition and non-solicitation provisions for departing shareholders
 - Dispute resolution – mediation and/or arbitration
-
- Greatly preferable to conclude shareholders' agreement before shares are issued to the other party, but can be done any time subsequently as long as all parties agree





Shareholder Agreement (Cont'd)

- For succession planning purposes, can include provisions for mandatory partial sales on certain triggering events to “earn in” other family members or professional managers (ie. financial and management milestones that trigger share transfers)
- Can confirm access to corporate owned life insurance for triggering sales involving death of the founder





Financial Power of Attorney

- Important where founder retains voting rights
- Ensures continuity of decision making in the event of incapacity of founder
- Can segregate decision making for business assets from other assets in separate powers of attorney
- Often overlooked as part of founder's estate plan



Will/Testamentary Trust

- Similar to powers of attorney to address founder's death
- Consider allocation of shares held by founder through will
- If allocate business shares to G2 operator use other assets to equalize among other G2 children
- Life insurance (corporate owned or individual) can be critical in founder's estate plan
- Use of testamentary trusts created in will can enhance flexibility for founder





Family Board Of Directors

- Brings G2 and G3 into decision making without direct share transfers/issuances
- Can help G2 operator learn strategic decision making skills
- Can create participation opportunity for G2 non-operator





Advisory Board

- Provides an outside business perspective to founder
- G2/G3 can sit on Board as well
- Can be an important tool as the family business grows to a significant scale
- Focus is on strategic business decisions, not family decisions



Family Council

- Involves all family members (founder, spouse, G2, G3, etc.)
- Deals with family issues (of which the family business is only one part) such as a family value statement, use of common family assets such as cottage/vacation properties, philanthropic activities including family foundation, etc.
- An option as families become more diverse, shares in the family business become more dispersed and family moves from G1/G2 to G2/G3/G4

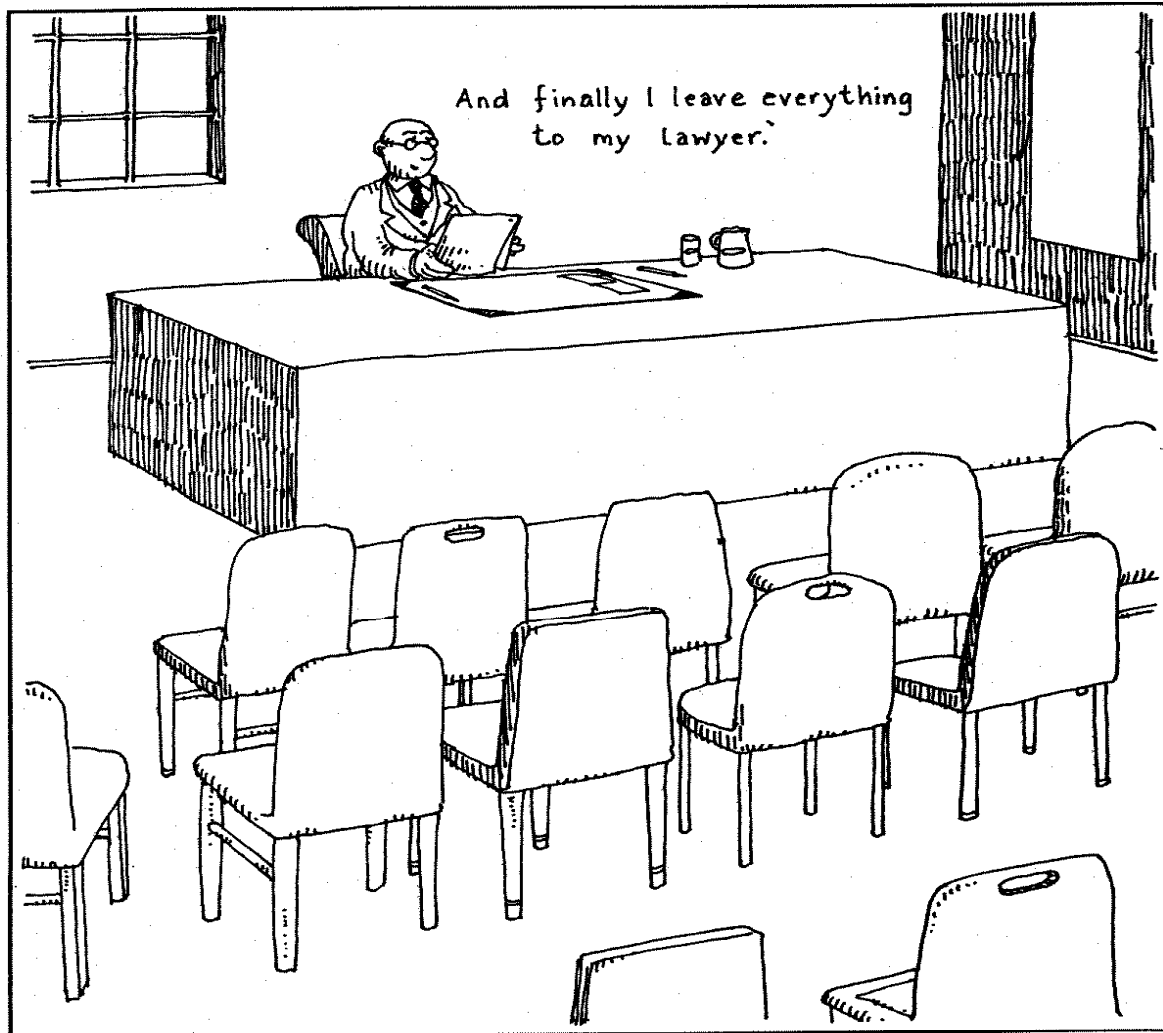




Family Office

- Can be single-family office or multi-family office
- A consideration for very high net worth families
- Provides integrated management of business, investment and personal assets among multiple generations and jurisdictions
- Provides specialized expertise for cross border estate/tax planning, charitable initiatives and related matters





Conclusion

- Each family business is different
- The succession/leadership structure for each is unique
- Various tools are available to maximize benefits and minimize risks
- The technical outcome for each family depends on the values, priorities and needs of each family





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