

SUCCESSION PLANNING FOR THE FAMILY-OWNED BUSINESS





- **“Leave It To Beaver”**



“Gladiator”



“Downton Abbey”

SUCCESSION PLANNING

- **Family adds Emotional Overlays**
- **But bottom line is often the same**
 - **Strength of business long-term**
 - **Adaptation to Market Conditions**
 - **Achievement of goals**
 - **Attention to Needs of Customers, Employees, Etc.**



SUCCESSION PLANNING

ADVICE FROM 50,000 FEET FOR THE OLDER GENERATION

- Facilitate discussion while alive and of sound mind
- Communicate decisions directly
- Recognize ability to control long-term is limited



SUCCESSION PLANNING

MORE GENERAL ADVICE – FOR THE YOUNGER GENERATION

- Be honest about desires/abilities
- Different levels of interest in business = different levels of participation and compensation
- If younger generation can't co-exist, will have to consider separation of economic and management interests



SUCCESSION PLANNING

GENERAL ADVICE TO ALL

- Best place to begin a constructive dialogue is to reach agreement on long-term goals
- Best option may be to turn some/all management over to skilled non-family members



SUCCESSION PLANNING

NOW, LET'S GET IN THE WEEDS



SUCCESSION PLANNING

WHY, WHEN AND HOW

WHY: For the reasons already discussed

WHEN: NOW!!!

HOW: Hire a lawyer
Buy-Sell Agreement



SUCCESSION PLANNING

AVOIDANCE ARGUMENTS

- “We all get along”
- “We agree on everything”
- “We trust each other”
- “Our business is doing just fine”
- “We’ll do the right thing when the time comes”
- “Who wants another contract?”



SUCCESSION PLANNING

WHAT IS A BUY-SELL AGREEMENT?

- Among Owners
 - Normally Entity is also a party
 - Addresses voting and/or transfers of ownership
 - Addresses management/ownership deadlocks
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- Separate Contract or in Governance Documents

SUCCESSION PLANNING VOTING PROVISIONS

- Election to Board
- Forced Compliance regarding change in control events (Drag-Along)
 - Sale of Assets
 - Sale of Stock
 - Merger
 - Dissolution



TRANSFER OF OWNERSHIP

Triggering Events

- Death
- Disability
- Divorce
- Retirement
- Termination of Employment
- Owner Insolvency
- Pledges
- Potential Outside Purchaser (Tag-Along)
- Violations of Restrictive Covenants
- Deadlock



BENEFITS OF BUY-SELL

- Negotiated while all on equal footing
 - leads to best results
- Eliminates negotiations at an emotionally-charged time
- Reduces Disputes if someone wishes to leave business
- Provides estates/former owners fair price for unmarketable interests
- Provides liquidity to disabled, retired, etc.; allows for planning
- Prevents delays in closing an estate, divorce proceedings, etc.



BENEFITS OF BUY-SELL (continued)

- Can create greater financial parity
- Provides certainty for ongoing business
- Keeps interests of owners aligned and focused on company's long-term interests
- Relieves successors from involvement in business
- Relieves business from intrusion of successors
- Lessens opportunities for conflict



KEY ISSUES FOR BUY-SELL

- Valuation Methods
 - Needs of business and ongoing owners vs. fairness to departing owners
 - Any reductions appropriate?
- Funding Alternatives
 - Insurance
 - Self-Funded
 - Borrowing
- Payment Methods
 - Cash
 - Note (Timing)
 - Earnouts

