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

• 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