

BUSINESS SUCCESSION

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For most closely held businesses, “ownership structure” was not much of an issue during the start-up process. When it comes time to create a succession plan, however, the “owner-operator” style of running a company may no longer work.

When a family business is passed on to future generations, it is likely that multiple owners or stakeholders will become involved. These individuals often vary in terms of their interest in- and aptitude for- running the operation.

Deciding the right ownership structure for the next generation business depends on each family’s situation. With that in mind, consider taking the following steps as you lead your family business toward a transition :

Separate the business from your personal assets. Some members of the next generation may be uninterested in its operation. This affords an opportunity to simplify the ownership structure: You can then leave the business to the interested heirs, and compensate the remaining heirs with passive shares in the company, or if possible, other unrelated assets.

However, if the business represents most of the family’s wealth, this might not be a workable strategy. In this case, the heirs now operating the company might instead need to buy it from the family members who are not involved. This can be a complicated financial transaction and usually involves a solid professional appraisal and an agreement made beforehand that’s not contingent upon the ultimate declared value of the business.

Convert your corporate structure. Your family business’s corporate structure, whether it’s a limited liability corporation (LLC), an S corporation, or a C corporation, was probably not established with a generational transfer in mind. Each corporate structure has certain benefits and drawbacks which should be analyzed to determine which type best fits your family’s needs.

When converting from one structure to another, be sure to involve your accountant in the process, since the change may lead to a hefty tax bill. In many cases, the solution may be simply a matter of timing.

Change your incorporation documents. In some cases it may be appropriate to alter the number and types of your firm’s shares to better define each heir’s degree of control over the operation. For example, nonvoting S-corporation stock can be issued to give the next generation equity in the business, but not control over it.

Draft a buy-sell agreement. A buy-sell agreement is critical for any business with multiple owners. The document outlines what happens to the company if one of the owners dies or wants to sell his or her shares. A flexible and thorough buy-sell

agreement can also simplify a complicated ownership structure by providing owners with a clear means of exiting the business if they so desire.

Unfortunately, many buy-sell agreements don't cover enough ground. Typically, the buy-sell agreement handles only what happens in the event of death, or maybe one or two other situations, like disability or divorce. For this reason, it is wise to work with a financial advisor and attorney to draft a comprehensive buy-sell agreement covering the full range of possible contingencies.

Even if you don't plan to retire anytime soon, it is always a good idea to start thinking about the right ownership structure for your family business. Otherwise, you face the risk of being unprepared at a critical moment.

Talk to your financial planner about:

- Separating business assets from family assets
- Determining the right corporate structure for your family business
- The terms of a possible buy-sell agreement