



Succession Planning for the Woman Entrepreneur

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Succession planning is perhaps the single most important management consideration any entrepreneur will face. Beyond the startup phase, business leadership has an obligation to each other, their respective families and to various other important stakeholders (employees, customers, sometimes even closely integrated suppliers) to assure leadership continuity. One of the cardinal tenets of Jack Welch's leadership of General Electric was that every executive and manager had an unqualified obligation to develop and prepare her or his successor. Discussing his emphasis on this responsibility in a Business Week profile in 1998, Welch explained, "Succession is part of the rebirth of an organization."

"Strictly business" enterprises

Often the succession plan fits up-and-coming talent within the organization. Ownership stakes can reinforce rising executives' commitment to the business' success.

Where the best choices for successors are found outside the business itself, negotiation about the program for earning an ownership stake often is a significant consideration in persuading the candidate to join the business.

Well-conceived incentive arrangements are not necessarily limited to cash awards. Long-term ownership incentive programs lend themselves to more broad-ranging structures, including buy/sell agreements and non-competition covenants. Long-term incentive ownership incentive programs afford the opportunity over time to evaluate and reward contributions of a group of key executives, as opposed to putting all the succession eggs into one basket prematurely. Improving the owner's liquidity has to be an important consideration for every person for whom a significant component of net worth is an interest in a closely held or family business. Key person insurance

(payable to the business if key employee dies) and buy/sell arrangements certainly are one element of improving liquidity; key person insurance often is the funding vehicle to enable a buy/sell agreement to operate upon an owner's death. Employee Stock Option Plans ("ESOP's") and installment purchase arrangements may be appropriate in a given set of facts.

Appropriate, thoughtful succession planning and improved liquidity are at their core of what the "buy" and "sell" components are meant to achieve. These agreements operate most fairly and transparently when they are spelled out in detail and employ credible, understandable valuation procedures. Alternatively, these may take the form of a right of first refusal, in which the "market price" ostensibly prevails—either because the willing third party winds up paying the price it has offered or because the other owner(s) agree to match the third party's offer. It could also be structured as a "shoot out", here one owner can give the other(s) a choice, either buy me out at the price offered or I can require you to sell your interest to me at that same valuation.

Even when good initial planning puts a buy-sell agreement in place in a business' early years, the existence of a buy/sell agreement may not be the last word on the subject. Conditions may have changed for the business, for one or more owners, or

for the economy or market. The structure initially agreed to may not serve anyone involved as well as it was intended to do. Some years later, the interests of the participants may be significantly different than they were originally. Where a better alternative can be crafted that can operate at least as fairly as the existing arrangement, the parties owe it to themselves and the business to have open minds and explore the options sincerely.

Where the family business has been operated as sole proprietorship or partnership, a complementary reason for initiating a well-planned program of transferring ownership interests to other participating family members may be reducing personal liability through use of corporate, limited liability company ("LLC") or family limited partnership ("FLP") form. Transferee's interests in entities other than sole proprietorships or general partnerships have the consequence of protecting the underlying business assets against creditors of (or others with claims hostile to) the individual holders of ownership interests.

In a family business, a number of important considerations typically support transferring the business into a more structured organizational form (such as LLC, FLP or other corporate form):

- Providing an institutional setting to resolve future business disputes short of embroiling the family and the business in

litigation; Shielding business ownership from exposure to failed marriages of any family members;

- Enhancing the flexibility of business and investment planning;

- Providing an institutional setting in which family members can gain understanding of the business and have opportunities to contribute to its success and creativity;

- Making it easier to implement a multi-year plan to restructure business ownership through annual gifts, incentive ownership programs, multiple classes of ownership interests or some combination;

- Simplifying potential administration of family members' estates and minimizing estate or inheritance tax burdens.

3rd Party Sale vs. Keeping it in the Family

When the entrepreneur has nurtured a family business, it can be very difficult to envision succession that arises not from the next generation in the family but instead from selling the business to an independent third party. But if a family business is the primary component of value in an estate plan, a range of inherent problems may arise from unquestioned adherence to retaining ownership within the family.

To begin with, members of the same

or other generations may already have charted different degrees of involvement in the business. It is almost guaranteed that different levels of business skill exist within the family. And it is just as likely that family members' financial needs will be even

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more wide-ranging.

In the absence of strong retirement (deferred compensation) planning, the business owner herself may be counting on the business to provide a significant continuing income stream while she plans to throttle back her day-to-day business participation. This may create a real cash flow dilemma for the next leadership generation in the family business, which finds it must balance reinvestment for growth, reasonable compensation programs for active employees including themselves and the founder's continued income expectations.

Unbundling the enterprise

Another approach to succession planning too often overlooked – particu-

larly with a family business – involves dividing a family business into a number of sustainable, discrete business units. Sometimes bigger is not better and the entire business under "one big tent" simply fails to assure smooth or effective decision-making. In fact, some family businesses do not add up to a coherent, well-focused enterprise. Rather, they represent a collection of businesses without logical connections or interdependence.

If a number of family members are involved across the business, they may have skills that do not span the entire collection of businesses but rather are suited to one realm more than to any other. Discrete businesses may be better positioned to accommodate individual work styles, income (and wealth) objectives and similar considerations of participating family members. Just as part of the motivation for transitioning a business to succeeding generations may be to allow family members to reap the benefits of their creativity, insight and entrepreneurship, reshaping the business into a number of sustainable enterprises may lead to overall enhancement of asset values. The challenge in taking things in this direction is to achieve fairness in the entrepreneur's estate plan over all, which may require attention to more than simply dividing the businesses.

Other things to keep an eye on in the succession context

As long as you're paying attention to succession planning, this would be an appropriate time to review some related concerns. If you are not yet using key person life insurance, the business enterprise and your family may both appreciate your careful investigation of putting coverage in place sooner rather than later. Group long-term care insurance coverage is also becoming more widely available. There is much confusion about whether Medicare covers assisted living and nursing home costs. The short answer is that Medicare provides virtually zero coverage for these long-term care expenses. The only national program that deals with long term care is Medicaid, which is fundamentally a welfare program limited to those with poverty or near-poverty level income and assets. As eligibility for Medicaid benefits has become significantly more restricted by Congress this year, some level of private long-term care insurance coverage may be very useful.

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