

Insights for Entrepreneurs

Part Five: Family-Owned Business Succession Strategies

Working as part of an integrated advisory team, your Morgan Stanley Private Wealth Advisor can help you make well-informed personal wealth management decisions at every stage of your company's development. Our goal is to provide you with the information, insight and resources needed to help you reach your personal and professional goals. We are here to help you answer the key questions that arise at the intersection of your business strategy and your personal wealth management plan.

When and How Do I Transfer Ownership of My Business to Younger Generations?

Raising children who are not only willing but also capable of taking over the family enterprise is an exceptional achievement in its own right. It can also create complex challenges related to your own retirement planning, family dynamics and the operation of your business. In terms of timing, however, the same principles apply, whether the younger generation will continue running the company or they are just holding equity as passive investors. In order to manage transfer taxes, it is best to implement planning in advance of significant appreciation in the business.

When the family business is successful and the founding generation wishes to retire, estate and gift tax rules can make it costly to transfer ownership to the next generation of family members. Consequently, it may be better to begin to transfer ownership before retirement by using gifting and other wealth transfer

strategies described in the Estate Planning Structures sheet of this series. These include, but are not limited to:

- Grantor Retained Annuity Trusts
- Intentionally Defective Grantor Trusts
- Outright gifts of shares under the federal lifetime gift/estate tax exemption amount*

Your family can also consider an employee stock ownership plan in order to provide liquidity to the retiring owners on a tax-advantaged basis, or an installment sale to the next generation, which would allow your children to use the cash flow of the business to pay you as the retiring owner.

How Do I Control What Happens to My Business at My Death?

A shareholder or operating agreement of your entity affects how your equity in the company may be transferred and the valuation, liquidation and other rights of your successors in interest. For example, you may provide that the equity interests pass under your "will or trust". The

entity's governing instruments may give "put rights" to your beneficiaries, or provide for mandatory redemption. The voting rights of nonemployee beneficiaries may also be limited so that management of the company remains with the employee shareholders. It is important to identify these provisions in your existing governing instruments and review any buy/sell agreements to make sure that they are in accordance with your wishes.

Consider whether additional planning is necessary. For example, if your family wishes to retain control of the company, will they have the cash flow to maintain their lifestyle? If they will need cash, how will the company raise the cash?

How Can I Plan for a Seamless Transition of the Company?

The keys to a successful transition of ownership are to have a clear succession plan in place and to keep it up to date. In order to create a plan, there are a number of considerations regarding the transition

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of ownership and management that must be considered. This differs quite markedly depending on whether your family will continue to manage the company, or if operational control will pass to your management team.

FAMILY BUSINESS SUCCESSION

If the goal is to pass the business ownership and management to family, a succession plan may include:

- Gifts of equity to children, either outright or in trust, in a tax-efficient manner.
- Bequests of equity at death along with a liquidity plan for estate taxes.
 - Typically, the federal estate tax is due nine months after the date of death. If the estate consists primarily of illiquid business interests, consider life-insurance funding, the potential for borrowing and any estate tax deferral opportunities for closely held business interests. For example, under current law, if the business represents a significant part of the taxable estate and certain other conditions are met, the executor may be able to defer the tax for up to five years, with interest, and pay in installments over a 10-year period after that.
 - Consider the allocation of equity among family members. Will each child inherit an equal share? Should the equity pass only to the child who

works in the business? Address family conflict issues that may arise based on shared ownership.

MANAGEMENT/EMPLOYEE SUCCESSION

If your goal is for employees to continue the business, you must have a sound and well-rounded management team. You should plan as far in advance as possible, prepare the company for transition, and consider financing options and tax consequences. Methods of transferring ownership to key employees include:

- Employee Stock Ownership Plan (ESOP)
- Sale to existing or new management (with or without private equity investment)
- Gifts to key employees

A number of governance issues will also need to be settled to ensure that your company can continue to operate effectively:

- Who are the key employees who will oversee day-to-day operations and serve in management positions?
- If your family retains a significant ownership stake in the company, will any or all of them participate in management?
- How will conflicts be resolved between family members and the family and company management?

THE INSIGHTS FOR ENTREPRENEURS SERIES COVERS THE FOLLOWING ADDITIONAL TOPICS:

Choosing a Business Structure

Early Stage Trust and Estate Planning

Overview of Wealth Planning Structures

The Public Sale of Privately Held Businesses

Philanthropic Strategies and Structures

Understanding Equity Compensation

FOR FURTHER INFORMATION

If you wish to discuss business succession issues and planning techniques in the context of your personal and professional goals, please speak to your Private Wealth Advisor. They can schedule a meeting with a Morgan Stanley specialist in Wealth Planning, or in Family Governance and Wealth Education.

* You should seek your own legal counsel for advice on what option best fits your particular circumstances.

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