

FAMILY BUSINESS SUCCESSION

BY PRIVATE CORPORATE COUNSEL

Business owners should consider succession planning as early as possible, especially when they are considering transferring their business to their children or other family members. Succession planning can also be part of a bigger picture that includes life plans, career plans, and what to do after you pass your business on to others. Deciding to create a family succession plan for your business involves more than simply transferring your business to your family members. There are many issues to consider before, during, and after you decide to transfer or sell your business to your family members, including the following:

Where can I get advice to make the best decisions?
What are my options?
Who can help me understand the critical family succession issues?
What kind of planning do I need to do?
Do I need a Letter of Intent (“LOI”)
How do I negotiate an agreement with my family?
What due diligence can I expect?
How do I manage the transition effectively?
What are the my risks and how can I mitigate them?

First, you must get the right counsel to help you on this journey. Private Corporate Counsel business lawyers have the legal and business education, training, and experience to help you. They also have practical experience representing businesses in many sectors and operating businesses themselves. This gives them added insight on what new entrepreneurs often tackle. Your Private Corporate Counsel (“PCC”) can help you in many ways, including:

Important Advice Regarding Succession Planning	PCC
Help You Analyze Your Other Exit Options	√
Help You Understand How Businesses are Valued	√
Help You Develop the Best Plan for You	√
Help You Develop a Plan for Succession Sustainability	√
Help You Analyze Business and Family Politics	√

Help You Analyze Inter-Personal Challenges of Succession	√
Help You Analyze the Legal issues of Succession	√
Help You Manage the Succession Process	√
Help You Manage the Post Succession Process	√
Help You Trouble Shoot Issues as they Arise	√

The next step is to analyze the options to family succession to ensure that family succession is right for you, the business and your family. This step requires a good understanding of your business, your industry, the industry trends, your competition, your family, and lots of self-reflection and planning. Your Private Corporate Counsel can help you identify and analyze the key issues. Here are some issues to consider during this phase:

Identify and the Options	PCC
Identify your aspirations, dreams, and goals	√
Identify your family members aspirations, dreams, & goals	√
Identify your business stakeholders aspirations, dreams & goals	√
Analyze how family succession will affect your family	√
Analyze how family succession will affect the business	√
Analyze how family succession will affect you	√
Compare family succession to selling to your workers	√
Compare family succession to selling in the open market	√
Analyze the financial issues for each option	√

After you have identified and analyzed your options and have decided on family succession, then its time to identify the strategic partners you need to help you take the next steps. At this stage, you should consult with your Private Corporate Counsel on how to identify, evaluate, and choose key external partners, including the following:

Choose the Key Partners	PCC
Family Counselor or Coach	√
Industry Expert	√

Valuation Expert	√
Accountant and Tax Professionals	√
Special Legal Support	√
Consultants	√

Once you have identified key partners, you should work with them to identify the issues and develop a strategic plan to manage the succession to your family members. An effective strategic plan should consider all relevant issues, including the following:

Develop a Strategic Plan	PCC
Identify your personal vision and life cycle stage	√
Identify how succession will help you realize your vision	√
Identify your business vision and business life cycle stage	√
Identify who will be in your succession planning team	√
Identify the impact of succession on your family	√
Identify the impact of succession of your workers	√
Identify the impact of succession on your customers	√
Identify critical dates	√
Identify the successor candidates and their competencies	√
Identify necessary leadership and operations competencies	√
Identify the training needed for successors to succeed	√
Identify how the training will be conducted and by whom	√
Identify how and when workers will be informed	√
Develop a timeframe from start to final exit	√
Develop a transition management plan	√
Develop a post exit plan to bolster institutional brain	√

The next stage is to begin the negotiation phase. Typically, the first document negotiated is the Letter of Intent (“LOI”); however, a LOI may not be necessary for all family succession plans. At this stage, if one is recommended, it is

important for you to talk to your Private Corporate Counsel about the key terms of the deal, including:

Negotiate a Letter of Intent (“LOI”)	PCC
Identify the Price Terms	√
Identify the Assets of the Entity to be Sold	√
Identify the Key Dates for Disclosure	√
Identify the Key Timeline for Due Diligence	√
Negotiate the Scope of NDA and Confidentiality Agreements	√
Negotiate the Contingencies of the LOI	√
Negotiate the date to Move from LOI to Contract	√
Complete the vetting of the Buyer	√

After you have negotiated a LOI and both parties have signed off, or you have decided that a LOI is not necessary, you can start to have more concrete discussions with your family, especially family members who are expected to succeed you. After this discussion, if everyone is on board with the overall plan, then it is time to begin to negotiate the purchase agreement (a Stock Purchase Agreement, if the target is a corporation, or a Membership Purchase Agreement, if the target is a Limited Liability Company, or an Asset Purchase Agreement if an asset sale). Consult with and leverage your Private Corporate Counsel to help you negotiate the following key points:

Negotiate The Purchase Agreement	PCC
Negotiate the Price and any Contingencies	√
Negotiate and Identify the Physical Assets Being Sold	√
Negotiate and Identify the Intangible Assets Being Sold	√
Negotiate and Identify the IP Assets Being Sold	√
Negotiate the Assignment of Key Contracts and Releases	√
Negotiate and Identify the Company’s Liabilities to be Assumed	√
Identify the Key Timeline for Additional Due Diligence	√
Negotiate Worker Benefits	√
Negotiate Remedies for Breach	√

Negotiate the Deposit, if Any	√
Negotiate Seller Financing, if Beneficial to Seller	√
Negotiate Transition Management Terms	√
Negotiate Other Key Terms of Agreement	√
Draft the Sales Agreement	√
Draft Collateral Agreements	√

The due diligence phase of the process is critical and is different from the due diligence stage of a sale to non-family members. During this phase, family members involved in the succession plan will have the opportunity to spend some time working in and on the business with the owner to ensure that there is a right fit. With the help of your Private Corporate Counsel, consider and analyze all relevant issues, including:

Due Diligence for Succession Planning	PCC
Organize, Review and Explain Financial Statements	√
Organize, Review and Explain Real Estate Records	√
Organize, Review and Explain List of Tangible Assets	√
Organize, Review and Explain List of Intangible Assets	√
Organize, Review and Explain Employee Files	√
Organize, Review and Explain Non-Employee Worker Files	√
Organize, Review and Explain Vendor Files	√
Organize, Review and Explain Supplier Files	√
Organize, Review and Explain Bank Statements	√
Organize, Review and Explain Business Tax Returns	√
Organize, Review and Explain Litigation History and Cases	√
Organize, Review and Explain Organization Records	√
Organize, Review and Explain Proof of Good Standing	√
Organize, Review and Explain Auditor's Letters	√
Organize, Review and Explain Company's Budgets and Plans	√
Organize, Review and Explain Internal Control Procedures	√
Organize, Review and Explain other relevant records	√

Help Execute Strategic Plan	√
Address Issues as they Arise	√
Help to Educate and Coach Successors	√

If your planned successors are a good fit, and you are comfortable with completing the transfer, then it is time to begin the process of preparing to close the deal. At closing it is important to have your Private Corporate Counsel present to ensure that you understand all of the closing issues addressed below, that the correct documents are executed correctly, and that any unexpected issues get resolved.

Close the Deal and Manage Transition	PCC
Prepare for Closing	√
Closing Checklist	√
Escrow Services	√
Review, Analyze and Advice on Closing Documents	√
Ensure Assignments of Key Contracts	√
Ensure Releases of Liability on Key Contracts	√
If Seller's Financing, Ensure Adequate Collateral	√
If Seller's Financing, Ensure Security Agreements Signed	√
IF Seller's Financing, Ensure Correct Documents Recorded	√
Ensure IRS Compliance	√
Confirm Transition Management Issues Addressed	√

Successful entrepreneurs who exit their business recognize that there is always a risk to their personal assets since accidents do happen. They also recognize that changes in the environment, technology, and politics are unpredictable and can be devastating. They must take steps to protect their assets by creating a risk management plan. The earlier they engage in risk mitigation planning, the more chances they have of creating a plan that will be effective when they need it. Therefore, at the onset, it is a good idea to talk to your Private Corporate Counsel about the following:

Reduce Your Risks with Advice and Planning	PCC
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Asset Protection Planning	√
New Venture Planning	√
Estate Planning	√
Segmentation of Risky Assets	√
Key Contracts to Limit Risks	√
Key Insurance to Cover Risks	√
Ready Access to Private Corporate Counsel to be Proactive	√

Entrepreneurs sell their business for many reasons, some business related, some personal related. They continually seek to achieve prime in their personal life cycle, relationship life cycle, family life cycle, professional life cycle, work/job life cycle, and their financial life cycle. The sale of their business can allow them to spend time on all of their life cycles and afford the things that will help them be the best version of themselves, and give them the opportunity to help others. The Private Corporate Counsel's membership program provides unlimited access to former business professionals to help them through each step of the journey and monthly coaching to address difficult issues as well as learn new ideas to ensure that they keep improving.

If you are thinking of selling your business or transferring it to your children, before making any decisions call us at 407-647-7887 to discuss your options.