

## Four Incentives to Start Your Family Business Succession Planning

We all know that death and taxes are the two certainties in life. It is also safe to say that putting off dealing with the topic of death and taxes is the next closest thing to a certainty. For family business owners, avoiding the topic can cause some significant problems.

Whether it is through planned retirement or an unexpected death, there are many interconnected issues when it comes to family business succession. These issues include tax, legal, insurance and, perhaps most significantly, change to the family dynamic. With planning, the impact of all these changes can be turned in the family's favour. While it may be tempting to avoid the topic, the potential benefits are substantial. The hardest part is taking that first step in the planning process.

Often, starting the succession planning process is motivated by a particular incentive. Four common objectives we help business owners achieve are:

1. Ensuring the long term stability of the business
2. Helping minimize the potential for family discord
3. Planning for retirement income
4. Reducing the tax bill when assets change hands

There are a variety of legal, accounting and financial tools at your disposal to help you achieve these objectives. They include:

### Will, Enduring Power of Attorney and Personal Directive

The first and most essential piece of the puzzle for any family business owner is to ensure the fundamentals of an estate plan are in place. This is particularly important should the business owner become incapacitated.

### Corporate Structure

A corporate restructuring can be used for effective tax planning at any time. As one generation looks to transition out of the business it can also be used to transfer assets in order to provide a tax efficient retirement income.

### Shareholders' Agreement

A family business shareholders' agreement is a critical part of succession planning and can be used to address a wide range of common scenarios including disability or death of a shareholder, restrictions on transfer of shares, and the timetable for the orderly transfer of control of the

business.

### Estate Freeze

This tax planning tool locks in the current value and tax liability of an asset for one person and assigns the future growth in capital value to other family members.

### Family Trust

There are many uses of trusts for family business owners. The most common function of a trust is to ensure the equitable and orderly distribution of wealth to younger generations. This can be particularly useful if there are family members who are not actively involved in the business.

### Marriage & Co-Habitation Agreements

Shareholder agreements often contain a provision stipulating that any family member with shares in the business must have a marriage or co-habitation agreement in place that removes the shares from their household assets. This is to prevent any of the shares from going to a non-family member should the relationship end. The marriage or co-habitation agreement formalizes this understanding between the two parties. See '[Protecting the Family Business from Marital Breakdown](#)' for more details.

### Life Insurance

Used effectively, life insurance can be an effective tool in estate planning. Common reasons for having life insurance include paying estate taxes on death, thereby leaving the original estate assets in place. It can also be used to fund the purchase of the deceased's shares in the business by another family member.

### Family Council / Meetings / Mediations / Collaboration

Effective estate planning and business succession does not happen in isolation or haphazardly. Creating a formal, professionally run family council will allow the family to participate in the planning and offer a forum for issues of concern to be expressed and resolved. All family members should be involved in the council and a team of trusted accounting, legal, investment and insurance professionals should be brought in to advise and implement the family's chosen plan.

It is never too early to start thinking about estate planning and business succession issues. Where the business and owner are at in their life cycle will help determine what aspects of the planning should be prioritized.

Interested in learning more? The experienced lawyers at Duncan Craig LLP are here to help and

we'd be pleased to meet with you for a complimentary discussion to answer any questions you may have.

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