

SUCCESSION PLANNING & WEALTH MANAGEMENT

# Talking Succession

Commentaries on transferring, or selling, your business



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## SUCCESSION PLANNING &amp; WEALTH MANAGEMENT



GUEST COMMENTARY BY JEREMY LITTLE

## Succession planning and family dynamics

Necessary but difficult discussions need to take place

Little about this past year has been easy. For family-owned wineries, it has been extremely difficult. Balancing business goals while keeping family engaged, happy, and paid is no simple feat.

With the year's end around the corner, some family businesses are looking at the future and the next steps in the evolution of their business. That analysis may involve whether to sell the business or pass it along to younger generations. Winery succession planning involves a deep examination into the family dynamics and the legal ramifications of transitioning the business.

The leadership group within each family-owned business should cultivate a plan for the future and work to gain consensus amongst all members. Creating and instilling a plan for your business and your family will provide peace of mind for your family and stability for your business.

Developing this plan with your family may be the most difficult obstacle in creating a successful succession plan. Some family-owned businesses find a natural successor in the generation following the founders (Gen 1).

However, many others find that members of Gen 1 do not want any part in the family business and would rather join the circus. There are also family businesses comprised of the founder, Gen 1, and the subsequent generation (Gen 2).

At this point, holiday gatherings can look more like a board meeting with festive decorations. Here, the relationships amongst the founders, Gen 1, and Gen 2 can be difficult, tense, and potentially derail business goals. If the structure is harmonious and considers the interests of all, discussions of succession can be more reasonable and rational.

If all family members agree to a succession plan, the next step is to review the organization documents governing your business. Depending on your entity choice (i.e. corporation, limited liability company, or other), documents such as the bylaws, shareholder agreements, operating agreements, or partnership agreements may dictate any process in changing ownership of your company.



These documents may contain rights granted to certain family members or others (i.e. investors), such as a right of first refusal or right of first option. These rights could also be in separate agreements. Either way, these rights grant others an opportunity to purchase the company or force the company to offer them the opportunity to buy the company. Determining the impact of these documents on your company's succession planning is extremely important.

Beyond your organization documents, you must review any loan documents that you are party to. Loan documents typically have covenants that limit any change of control or change of ownership of your company.

An open conversation with your lender is important when planning a transition. Your lender will provide a path, if available, to permit a change of control or ownership.

Likewise, consulting with your accountant is necessary to understand the tax implications of organizing or re-structuring your family business with Gen 1 and Gen 2 members in mind and/or perhaps selling your company. There are ways to retain control or keep your management position while transferring economic rights to others. There are gift and estate tax exemptions, trusts for the benefit of Gen 1 or Gen 2, and each new year seems to bring about new tax regulations that impact your ultimate decision. Having a trusted relationship with your accountant is beneficial understanding all of these tools and for any succession planning

process.

With your family, lender, and accountant on board, it is time to review the other branches of your business tree. There are numerous agreements such as grape contracts, vineyard or building leases, custom crush or AP agreements, and other vendor agreements that must be reviewed.

These agreements typically contain assignment provisions that will determine if you need consent to transfer. The term length of these agreements may also play into your timing of the succession process.

If you own real property, you may have licenses, easements, or vineyard management agreements. Each document governs how you and others access, use, develop, and improve your land. The implications laid out in these documents must be understood and carefully reviewed as part of your overall business analysis.

Further, you are likely to have protected the family name and any other labels or brands that have been developed over the life of the business and this intellectual property is an asset that may be transferred. Many family-owned wineries have their surname front and center in all marketing material.

The name and winery are synonymous and there is likely a great deal of goodwill connected to the name. This goodwill has significant value and, in certain cases, is the most valuable asset of the winery. How you decide to control, license, or transfer your name will have considerable impact on the value of your

business and your succession plan.

Last, as an alcoholic beverage business, you are well aware of regulations that control your business, and, thus, your TTB and ABC licenses and permits will need to be examined and updated as your succession plan is implemented. If you plan to incorporate Gen 1 and/or Gen 2 into your business, you may need to include them on those licenses and permits. This is a time-consuming effort that will take additional cooperation and organization from all involved.

Succession planning for any business, let alone a family-owned business, is an emotional process that reaches and impacts all aspects of your business. Having solid relationships amongst family members and with trusted consultants provides for a smoother transition. It is imperative having a trusted team of consultants advising you on the legal, tax, and compliance elements of your business. Being part of a team that supports your vision allows you to create a succession plan and rest easy while you focus on making great wine.

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