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Contingency succession plans for reluctant business owners

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"Hell no, I won't go!" was the rallying cry among draft-age youth during the Vietnam War era. Today, it's the mantra of many business owners who, even at a point in life blessed by advanced age, health and wealth, don't want to give up control of their companies. This, of course, makes it tough on family members and key employees who are understandably anxious to assume the helms of these firms and "do it their way." It's also distressing for the millions of employees of family businesses and closely held firms who wait daily for a proverbial "shoe" to drop. (Family businesses represent more than seventy-five percent of all business enterprises).

Admittedly, the uncertainty and unpredictability of such a situation is tough on loyal followers who want the best for a firm and their future with it. But this is a common conundrum. Owners -- even octogenarians -- can recite a litany of reasons why the time isn't right: *"My health is excellent;" "Talented successors are hard to find;" "The taxes would kill me;" "We are at a critical point in our history and no one can do this job as well as I;" "I don't want to choose one person and disappoint many."*

The truth of the matter is that, over time, a business becomes its owner's soul mate and lover, and it takes more than fifty reasons to leave it. Many owners fear that taking leave of their enterprises would result in a loss of identity, social position, and relevance. They dread endless, empty hours bereft of contact with customers and cronies. Not a pretty prospect for someone who spent most of his or her life caring for and feeding a demanding "lover."

On the other hand, the up-and-comers have some good arguments for putting the old horse out to pasture. Every firm needs a constant flow of new ideas and energy. Young successor stallions thrive on opportunities to take more risk, do more, and make more. They need to feel a sense of personal progress; they covet opportunities to show what they can do. Increasingly, they crave a piece of the action.

So, who is right? Who should prevail? The answer is everybody, although the owner has the catbird seat since "possession is nine-tenths of the law." But an owner must be mindful of the fact that with ultimate control comes the ultimate responsibility for the welfare of the firm and all of its constituents. A successful owner has created a value that is extremely important to employees, vendors, customers, and the communities touched by his or her firm's operations. No matter what pocket holds this treasure, the owner has a responsibility to protect and vouchsafe it.

The good news is that the owner can "have his cake and eat it too," if he is willing to make some preparations. The quid pro quo can be palatable: Keep the top spot but make some specific contingency plans. The goal of such planning does not have to be the "graduation" of the owner at a definite point in time. For all the reasons mentioned, an owner might prefer to hold off succession until his age and blood pressure approach triple digitsor until he is hit by that proverbial big red truck.

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But, whatever the owner's present intentions, a comprehensive contingency succession plan should be in place for of benefit all. In every life -- even that of a hale and hearty business owner -- the "if" always becomes a "when." To ignore this fact and the preparations it begs threatens the legacy of the owner and the inheritance of all those touched by the business.

A contingency plan should:

- 1) Identify and prepare successors to both ownership and management positions;
- 2) Let key employees know just what will happen and who will be affected when a transition finally occurs (uncertainty in this regard hurts productivity and might even cause some essential players to jump ship in the interim);
- 3) Provide for the funding to facilitate a change in ownership (a well structured insurance program with inexpensive, properly owned, life and disability insurance can provide the purchase wherewithal for the eventual successors and the deserved financial rewards for the seller and his family);
- 4) A will, estate plan, buy/sell agreements, and shareholder agreements that allow everything to eventually happen without a hitch;
- 5) A tax plan and equity distribution scheme that reduces to a minimum the eventual take of every firm's big "silent partner," Uncle Sam;
- 6) Appropriate, up-to-date corporate charter, bylaws, minute book and stock certificates;
- 7) An ownership structure that protects the business wealth from frivolous litigation and claims;
- 8) A plan that takes care of family members who will not be involved in the business once the owner moves on;
- 9) A limited liability corporation set up as a holding company coupled with a stock gifting program that allows the owner to effect a tax advantaged distribution of equity without relinquishing control.

Brass Tacks Tip: A business owner must, early on, organize his attorney, accountant, insurance provider and financial planner into a proactive *team* with definite marching orders. Their work product should be a carefully designed succession plan, contingent in nature if that is the wish of the owner. This is literally a *life and death* issue since, in these kinds of circumstances, the dreaded "if" always becomes a "when." A contingency succession plan will ensure that the owner is in the catbird seat, as always, when the "when" happens.

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Brass Tacks Definition: "Getting down to brass tacks" *adv phr fr early 1900's* Dealing with the essentials; concerned with the immediate practical realities. *Webster.*