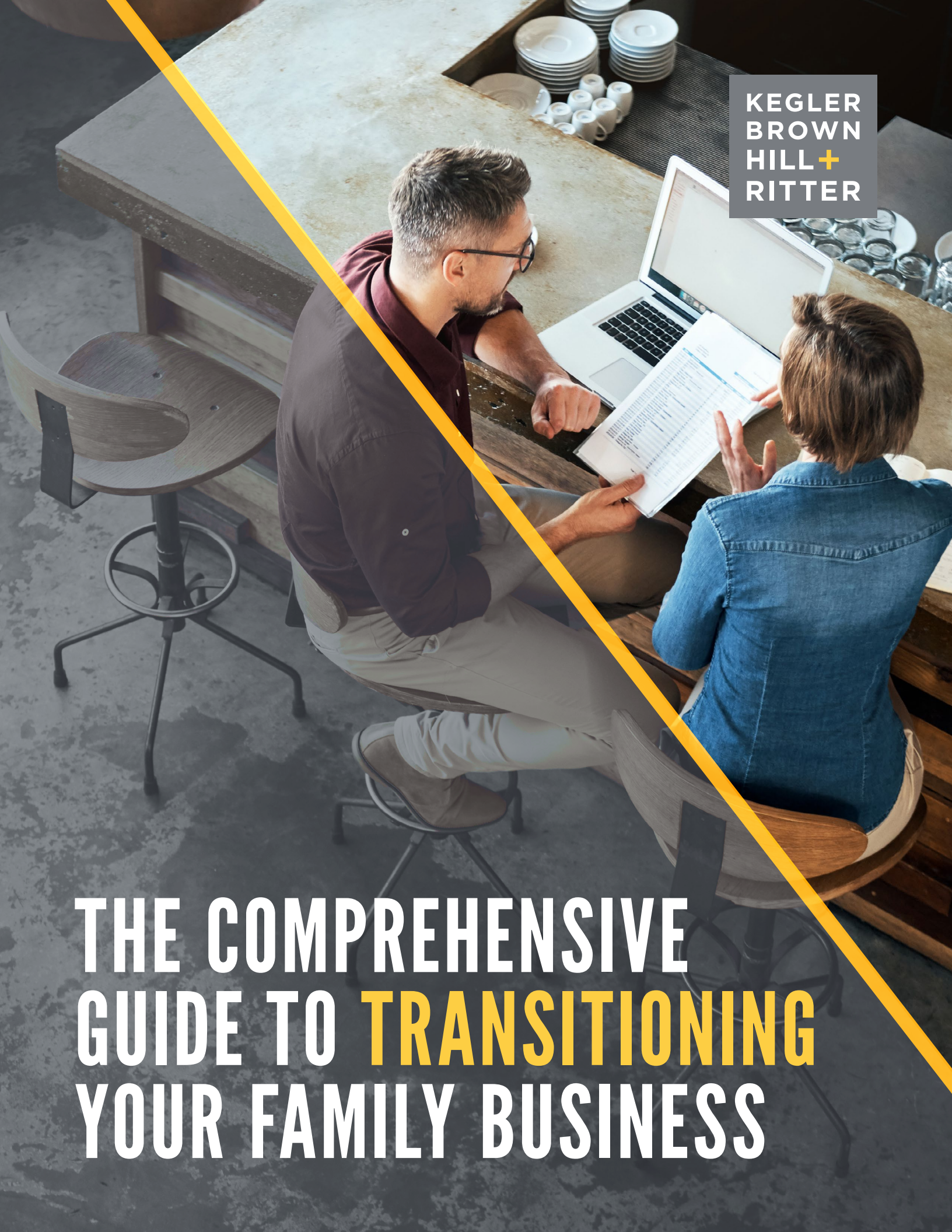

KEGLER BROWN HILL + RITTER

THE COMPREHENSIVE GUIDE TO TRANSITIONING YOUR FAMILY BUSINESS

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About the Author

Eric Duffee is a director and co-chair of Kegler Brown's M+A practice. In his widely read *Anatomy of a Deal* series, from which these insights were selected, Eric simplified various aspects of deal-making in order to help private company owners better understand the terms, processes, and strategies involved in transitioning their businesses. Much more can be found here.

Crash Course in Family Succession – Part 1

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice

Let's talk about intra-family succession strategies. For many business owners, the dream has always been to pass the business on to one or more children. In fact, several studies indicate that the vast majority of business owners want to hand the business off to their children. Yet, far less than a majority actually do so.

The statistics are downright sobering. According to the Exit Planning Institute's research, only about 30% of family-owned businesses successfully transition from the first to the second generation. And only about 10% make it to the third.

In Part 2, we'll dig into some of the specific family succession strategies that we see. But before doing that, let's explore some of the reasons why family transitions are so hard. And, just maybe we can attempt to uncover some answers that can help business owners chart a course toward success in family transitions.
With a shout-out to the glorious days of 1980s-1990s TV...

REASON 1: The Real World.

This one is pretty easy to grasp in concept, but hard for parents to accept. We all want to believe that our children are capable of doing anything. And, for many parents, there's an assumption that our kids will have the same passion for the business that has motivated the parents all these years.

However, those hopes often don't match with reality. If they did, my brother and I would be partners at Duffee Insurance.

Many parent/business owners can't—or won't—accept the reality that their kids might not really have the capability to succeed their parents in the family business or, perhaps even more distressing, that they may not want to.

Many family transitions fail because the hopes of the parents don't align with reality. It's time for parent/business owners and their children to stop being polite, and start getting real about the future of the children in the business.

REASON 2: Who's the Boss?

Once we get past the first question, the next question is how to handle control issues. Unless there's an only-child or only one child who's involved in the business (we'll get to that delicate issue next),

there's bound to be a question as to who calls the shots.

The easiest solution is to give all of the children equal control. There are undoubtedly cases where that works, but far more often, shared control means no control at all and the business suffers as a result.

In those cases, we tend to see two possible dynamics. First, there's the situation where there is a "natural successor" who rises to the top and the other siblings inherently acknowledge and accept that. Alternatively, there's a situation where there's a constant power struggle between siblings, which usually leads to an ugly break-up at some point.

> "For business owners, the question of fairness vs. equality is inescapable."

In either event, business owners need to be open and realistic about how management and control issues will be handled post-transition. Just handing equal control to multiple siblings and expecting things to work out is a recipe for potential disaster.

In many cases, the parents will choose a designated successor from among the children. While that may solve the immediate issue of ensuring that there's someone in charge, it often creates conflict among the siblings. While that conflict may be unavoidable, it must be addressed head-on.

REASON 3: The Facts of Life.

We often use this seemingly simple question when talking with business owners who are considering family transitions: Is it important that we treat your children fairly or equally?

The question usually elicits a puzzled response. Of course, we want to be fair. And fair means equal, right?

Not necessarily.

As an example, if you have one child with special needs and one who is independently wealthy, are you being fair to both children if you use more resources to provide the necessary care for the child with special needs? That's clearly not equal. But is it fair?

For business owners, the question of fairness vs. equality is inescapable. It may be impossible to sustain the business by simply dividing it equally among all of the children. So if one child gets the business (or control of it) while the others don't, that won't be equal. But it may still be fair.

There's no easy answer to this one, but parents who are business owners need to be able to think about what's fair to everyone. Fair to the children. Fair to the business. Fair to the business' stakeholders.

And sometimes the business owner gets comfortable with the fairness vs. equality dynamic, but the spouse doesn't. That's why the spouse must always be a part of the family succession plan.

Many family transitions never happen because the parents can't bear to make a decision that results in some actual or perceived inequality. So they sell the business to a third party or an ESOP. And that's a perfectly fine result for many families. It avoids conflict and allows the parents to treat the children both fairly and equally.

Fair or equal? It's a simple question on the surface, but it's often really hard for a lot of families. And a successful family transition often hinges on the parents' ability to separate the two.

REASON 4: Family Matters.

Business is hard. Family is hard. So, of course family business is going to be really hard.

We all have disagreements with our co-workers sometimes. But most of us don't have to share Thanksgiving dinner with them.

And the lines between business and family will always blur. Sibling rivalries and family spats don't stop at the company door.

When we get involved in family business disputes, we often find that the source of the conflict is much deeper than the "business issue" that's the apparent source of argument. In many cases, the real issue has almost nothing to do with the business, but with some conflict that happened when they were kids.

When these long-standing issues fester, they threaten the business and the transition plan. They contribute to distrust. And without trust, a family succession is doomed to failure.

In many cases, family counseling is an incredibly important part of the succession strategy, but we often see family members who are reluctant to participate. Logically, they believe that they are able to separate the business from the family. Unfortunately, on a subconscious level, it's impossible to separate business and family.

Family businesses are beautiful in many ways. But they also bring a unique set of challenges. Instead of pretending that we have to keep family and business matters separate, a family transition will only be successful when we accept that family situations affect the business and vice versa. That's why it's called a "family business."

REASON 5: Charles in Charge.

Paradoxically, the biggest impediment to a family transition is sometimes the current business owner. The reason? It could be that the business owner is not emotionally ready to transition. Or it could be that the business owner's vision for the business doesn't match up with his children's vision. Both are a source of continual—yet often unspoken—tension that can entirely derail the family succession.

It's important to emphasize that we're not talking about cultural alignment here. It's always going to be important that the business owner and successor have a common approach to the business' culture. However, they're bound to disagree on a lot of things. The parent will naturally have a strong sense of what's good for the business, forged by years of trial-and-error. The child will have a fresh perspective that she will want to share and implement.

Business owners sometimes want to keep a grip on everything that happens after the would-be transition. In many cases, that approach is destined to fail. The child quickly becomes frustrated and disillusioned with her role. Employees quickly see that the parent is still in charge and bypass the child entirely.

That's not to say that a parent should just hand over the reins without any questions asked. A staged approach where leadership responsibility is transitioned over time can be very effective. However, it's important to have clear expectations about that arrangement—both between parent and child and with the company's employees, customers and other stakeholders. This is often best addressed by having a written plan with clear milestones for how the transition will take place.

And it's equally important that the parent be comfortable with her role going forward. If the plan simply expects the parent to get out of the way and sit on the beach, it will fail. Business owners don't simply go from living-and-breathing the business 100% of the time to 0% involvement overnight. It's important to develop a clear life-after-transition plan for the business owner, which often will involve a real role for the business owner going forward, whether as a chairperson, trusted advisor or ambassador with employees or customers.

REASON 6: The A-Team.

So let's say that we've got all of the above issues completely figured out. We've made it, right? Not so fast. Because there's still the matter of how we handle the succession with non-family members.

Non-family members are a big part of many businesses. And sometimes these people are incredibly important leaders for the business. They've been loyal to the business owner and embraced their role, and they have important institutional knowledge and experience that will be critical to the successful transition of responsibility to the next generation.

But they're also human.

These people may have the hardest time accepting a transition from parent to child. Some of it is jealousy; they hoped—no matter how unlikely—that they might someday have the chance to run the show. Some of it is a belief—perhaps accurate—that they know more than the child. How could they possibly be required to answer to the child now? Or, they may be fearful that they won't have a future role with a new owner.

Another problem: they may be the least willing to express their concerns or uneasiness, for obvious reasons. Instead, we often see some leave the company after the transition, taking a lot of valuable experience and knowledge with them. Or we see some sort

of persistent passive-aggressiveness that creates more damage and distrust.

The solution? You can't assume that your key team members are fine, even if they say they are. It's going to take some heart-to-heart conversations with these folks to understand their fears and concerns. And then, it will take some work and creativity to see if there's a solution that can get them comfortable with their role going forward. It's important that they know they don't have a veto right over the transition, but that they're still very important to the business and that both parent and child want their continued commitment to the business. Maybe those conversations will reveal that some sort of incentive plan will help get them comfortable. Or maybe it will become clear that there's no solution that will make them happy. Even in that case, it's better to know that now than just to assume everything is fine, when it's clearly not.

"The best succession plan technique will still fail 100% of the time if we don't have the right platform in place."

REASON 7: Dynasty.

The last reason we'll talk about here—though there are undoubtedly others—is simply a matter of numbers. Families obviously get bigger with each generation. It becomes more and more difficult with each generation to transition ownership and satisfy the goal of overall fairness as each successive generation gets bigger. It's also more and more difficult to maintain a consistent message and culture as each generation stretches farther and farther away from the founder.

The decisions will become more and more difficult with each passing generation. At some point, it will probably be necessary for one sibling to buy-out another sibling, for a parent to take a child out of the business, or for the owner to ultimately decide that it's time to sell the business. As if the family transition wasn't hard enough on its own, the passage of time itself only makes it harder.

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Running and successfully transitioning a family business is incredibly difficult. But when done properly, it can be extraordinarily rewarding, for both generations.

So why the long gloomy piece telling us all of these reasons why family transitions fail? Thanks, Debbie Downer.

Yes, it's somewhat pessimistic. But it's also real life. The important point is that you cannot successfully complete a family transition without addressing these realities head-on. Ignoring the difficult questions won't make them go away.

While the tools we use to accomplish the transition are important (and we'll address some of those next month), the first step must be setting the stage for a successful transition. The best succession plan technique will still fail 100% of the time if we don't have the right platform in place.

And to complicate things even more, there's no one-size-fits-all solution to how we deal with these issues. Every business is different. Every family is different. So every plan must be different as well. That's obvious, right? Well, believe it or not, I still get the occasional phone call asking me for a "form" succession plan.

The good news? Your business doesn't have to be just another statistic. If you're willing to do the hard work of wrestling with the issues identified above (and undoubtedly others), you can buck the trend of failed family successions. I've personally had the privilege to work with a number of companies who have done just that. Their secret? Acknowledging these challenges and actively working on solving them together...not just when it's time for a transition, but on an almost daily basis.

Crash Course in Family Succession – Part 2

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice

Now that we've addressed some of the reasons why family transitions are so hard, I promise to be more optimistic (but also more boring—hey, it's not my fault the subject matter is so dry) as we talk about how to actually make the transition work once we've laid the proper groundwork to ensure a successful hand-off to the next generation.

As we said in Part 1, transfers within the family raise a whole host of unique issues, and that's also true of the actual nuts-and-bolts processes by which we accomplish the transfer. So let's dive right in.

Death + Taxes

We all know Ben Franklin's old saying about death and taxes. That saying has never held more truth than when talking about a transfer within the family. And that's because we don't have to worry just about income taxes (which do still apply in family transitions), we also have to worry about estate and gift taxes. Whoopee!

For as long as I've been practicing law, there has been some proposal or another to eliminate the federal estate tax. Yet, unless you died in 2010 (in which case, let me thank you for being a loyal reader of *Anatomy of a Deal* from the afterlife!), you've lived in a world where federal estate taxes still exist, with no signs of that changing anytime soon given the current political landscape.

At the same time, however, estate taxes are becoming less onerous and affect fewer people. In 1975, the estate tax exemption per person (i.e., the amount of net worth an individual has at death that is exempt from estate tax) was $60,000 and the top estate tax rate was 77%. Ouch!

Today, the exemption is $11.7 million and the top estate tax rate is 40%—at least for the next few years when the law is next scheduled to change. As a result, a married business owner today—with some proper planning—could avoid federal estate taxes entirely if the owner's total net worth (including the business) at the time of death is $23.4 million or less.

So despite the estate tax being a political hot button for many years, the truth is that it only affects a very small percentage of the general public and represents just a tiny fraction of the federal government's revenue. However, of those whom it affects, a disproportionate number are owners of privately held businesses. And despite

the fact that they are wealthy on paper, the reality is that most of those business owners' net worth is tied up almost entirely in the business itself. If the IRS came knocking on the door for its 40% share, many business owners' estates would be forced to sell off the company to generate the cash needed to pay the government. A disagreeable result for business owners who dream of passing the business on within the family.

Fine. "Why don't I just give the business to my kids before I die? My estate tax problem goes away, right?" Good thought, but Congress already saw that coming and enacted a gift tax, which complements the estate tax. So, if you make gifts in excess of those same exemptions as noted above (though, at some points in history, there have actually been lower gift tax exemptions than estate tax exemptions), you still pay the tax. There's no simple fix to the problem.

And it's important to point out that the estate and gift tax exemptions are "unified," meaning that gifts you make during lifetime against the gift exemption also reduce the estate exemption remaining at your death on a dollar-for-dollar basis. So you don't get both a gift exemption and an estate exemption.

Also, be aware that some states levy their own estate taxes. Ohio abolished its estate tax, but in other states, the state estate tax can be onerous.

Are you still there? Oh, good. I thought I'd lost you. So now that we know the problem, what can we do?

Sometimes you'll hear it said that estate and gift taxes are a "voluntary" tax. While not literally true, the reason is that if—and that's a very big IF for many business owners—you're willing to do some sophisticated tax planning and you're willing to do it early enough, you can avoid paying these taxes entirely. So let's introduce some of the ways we can do that...depending on the specific situation.

The Gift That Keeps on Giving

The simplest (but slowest) way to transition ownership from one generation to the next is through annual gifting. In addition to your estate and gift tax exemption as noted above, the government also gives you an "annual exclusion" whereby you can gift up to a certain amount per recipient, per year. As long as each qualifying gift stays under the annual exclusion limit (currently $15,000/recipient/year, but can change annually based on inflation) that amount doesn't count as a gift for tax purposes and it doesn't even count against your estate/gift tax exemption.

Huh?

Maybe an example will help. Let's say business owner and spouse each give the full $15,000 to each of their four children every year. That's a total gift of $120,000 per year. And because the children are all married, they can each give another $15,000 per year to their children's spouses. There's another $120,000. So that's almost a quarter of a million bucks in value that can be transferred, per year, with no tax complications. Add in grandchildren, and you could increase these amounts even further. And the best part is that these gifts don't reduce the business owner's or spouse's estate/gift tax exemption; the entire (current) $11.7 million remains available to shield further gift or estate taxes at a later date, or at death.

And the gift doesn't need to be cash. It can be any property, so long as you're able to establish the value is less than the annual exclusion limit. One of the great benefits of using private company stock for gifts or any of the other types of transfers described below is that there are often discounts that apply based on the fact that the stock is non-marketable and non-controlling. That gives you more gifting bang for your buck. Discounting is a much bigger topic for another day, but suffice to say that you want to be sure you're getting the help of experienced advisors whenever you're transferring private stock.

The downside of the annual gifting strategy, of course, is that it takes a long time to move really big values. If the business owner owns

a business worth $20 million, he or she will need to start annual gifting very early to make any meaningful dent. And because the real power of annual gifting comes from having multiple gift recipients, the business owner has to "spread the wealth" among a bigger universe of people to get the greatest effect. Is the business owner comfortable transferring ownership to sons- or daughters-in-law? What about grandchildren?

Some of those concerns can be mitigated by recapitalizing the company to provide for voting and non-voting stock, so that only the non-voting stock is being gifted. And trusts with so-called Crummey powers (Crummey is the name of the court case that endorsed this strategy—not a commentary on the quality of the trust, as I originally thought when I first started practicing law) can be used to ensure that the assets are "locked up" in some fashion and to protect those assets from creditors, divorce, spend-happy beneficiaries, etc. But there is still some risk whenever you broaden the universe of people who directly or indirectly own a part of the company.

While annual gifting is great, at some point it may make sense to make bigger gifts and start using up some of that lifetime estate/gift tax exemption. This is particularly true when the exemption amount is scheduled to be reduced, as was supposed to happen at the end of 2012 and 2020 (but didn't) and is next scheduled to occur at the end of 2025, unless it happens before then. Or it doesn't happen at all. Or it goes up. The incessant political uncertainty over the estate tax makes planning for business owners exceptionally difficult.

Even once you exhaust your exemption and have crossed the threshold into paying gift tax, there are strategies that can limit the gift tax exposure (such as so-called "net gifts"). And, while few business owners like the idea of paying taxes today, there are sometimes good reasons to do it now.

First, making the gift now ensures that future appreciation in the value of the stock grows outside of the owner's taxable estate. We avoid magnifying the problem by transferring the stock before it has even more value. Second, it's actually mathematically true that paying gift taxes today is cheaper than waiting and paying estate taxes at death, all else being equal—which, unfortunately, is often hard to gauge given the ever-changing political dynamics. That's because paying the gift taxes during lifetime will remove the gift taxes already paid from your taxable estate at death.

For many business owners, a strategy involving annual gifting plus some targeted and properly structured larger gifts provides just the right mix to move value to the next generation without creating additional headaches or problems. Trusts can provide some flexibility and control over how the stock is handled post-gift. But, for clients where gifting alone isn't sufficient—or where the idea of giving the business to children outright rather than selling is inconsistent with their personal planning or values—other options are available.

In Part 3, we dive deep into business legacy planning by covering related strategies for transitioning value during an owner's lifetime: strategic trusts.

Crash Course in Family Succession – Part 3

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice

If you enjoyed the first two installments of this treatise on the topic of family succession, in which we covered avoidable family succession landmines in Part 1 and transition through estate and gift planning in Part 2, you're going to love Part 3 (I hope!).

And if family succession is on your mind, I'd be remiss if I didn't give you the opportunity to check out the candid conversation I recently had with renowned entrepreneur Jim Grote as part of the Exit Planning Institute's programming on family transitions. In full disclosure, Kegler Brown is a founding member of the EPI Central Ohio Chapter.

Check out the interview.

Anyway, we're here to talk about another traditionally effective (if done correctly) strategy for transitioning family wealth and business interests to the next generation(s). To quote Billy Joel- it's "A Matter of Trust." But not just any kind of trust, mind you- we're going to cover how business owners could leverage Grantor Retained Annuity Trusts and Intentionally Defective Irrevocable Trusts to achieve their goals! Who's excited!?!

It's GRAT-Tastic

The first thing you need to know about tax lawyers is that they **love** their acronyms. Introducing the first acronym in our parade: the Grantor Retained Annuity Trust (GRAT). There will be a test.

I'll spare you from all of the mind-numbing details, but at the most basic level, the GRAT provides a structure to transfer ownership of an asset over time by transferring future appreciation in the business' value to the next generation free of estate and gift taxes.

How does that work? This strategy comes straight out of the tax code. Here's the overly simple explanation. The business owner sets up this special trust known as a GRAT and transfers some of the company's stock to the GRAT. Then, the IRS gives us a required rate of return to use. In the simplest form, the GRAT has to pay the business owner his or her initial principal, plus the required rate of return in the form of an annuity over the course of the GRAT's term. Anything that remains after making the required annuity payments—being the additional appreciation in the value of the company's stock over the required rate of return—passes free from estate and gift taxes to the next generation (or a trust for their benefit).

So the benefit of the GRAT in this scenario is a combination of discounting (as we mentioned in Part 2) and the ability to move appreciation to the next generation in an estate/gift tax-free manner. All with pretty minimal effort, other than setting it up and giving it time to work. How about that?

And what happens if the economy tanks again and the stock doesn't appreciate (or worse, loses value)? In that case, the business owner just takes the stock back and we start over. It's heads I win, tails I tie.

So what's the catch? There are a few. Most notably, if the grantor (that's the business owner in our situation) doesn't survive the term of the GRAT, then the whole transaction gets canceled and all of the GRAT's assets are returned to the grantor's taxable estate. In one sense, the grantor is no worse off than had he done nothing at all, but it's still not ideal when the tax benefits are lost in this way. In response, many business owners will employ a strategy of "rolling GRATs," which are simply a series of short-term GRATs implemented in succession. The gains (if any) get captured with each short-term GRAT, and then the grantor starts all over again with a new GRAT. Rinse and repeat.

> "The rolling GRAT is a good strategy, but it still has some mortality risk—we've only limited the risk."

The rolling GRAT is a good strategy, but it still has some mortality risk—we've only limited the risk. It's also a strategy that has long been under attack, particularly by Democratic administrations. Will the Biden administration finally be the one to kill the "rolling GRAT" with a mandatory 10-year GRAT term or something else? Time will tell.

In addition, the GRAT still requires—by virtue of the mandatory annuity payments—that all or most of the initial principal plus some additional amount be returned to the grantor over the course of the GRAT term. The hope is that, over time, the appreciation that passes to the next generation will dwarf the original principal, but in most cases that takes a lot of time to occur. So, as with virtually all estate/gift tax planning strategies, the GRAT needs a substantial amount of time to work as intended.

Because the GRAT is a nifty but imperfect solution to the problem, smart people came up with another alternative with its own benefits and pitfalls...

Oops IDIT Again

The next acronym you'll need to know for the exam is IDIT: intentionally defective irrevocable trust (also sometimes known as IDGT—intentionally defective grantor trust). Now what the hell is that? And why would anyone intentionally make something defective?

Long story (and as far as most people are concerned, not a particularly interesting one). But the IDIT takes advantage of a quirk in the tax law that treats a particular kind of trust as though the grantor still owns the trust's assets for income tax purposes **but not** for estate/gift tax purposes.

Cool story but who cares? Well that little peculiarity in the tax law can be used to do some powerful stuff. Suppose a business owner sets up one of these magical IDITs and sells stock in the business to the IDIT. What does that accomplish? Because the assets in the trust are outside of the grantor's estate for estate/gift tax purposes, all of the future appreciation in that stock will grow free from estate/gift taxes. And when combined with discounting, the IDIT sale can effectively give us all of the same benefits as a GRAT.

And remember, this is a sale. Not a gift. So we aren't constrained by the gifting limits noted in Part 2. There's only a relatively small gift that needs to be made at the outset to implement this strategy. So we can move bigger values than we could with straight gifting.

Hold on, though. If the business owner **sells** her stock to the IDIT, won't she trigger a capital gain on the sale of the stock? Excellent question, but the answer is no. That's because the IDIT is treated as though the business owner still owns the trust for **income tax** purposes. You don't have a taxable gain if you sell something to yourself.

Pretty neat, huh? But why's this any better than a GRAT?

First, this sale can avoid the mortality risk associated with the GRAT. If the grantor dies when half of the note from the IDIT sale is paid off, only the remaining half of that principal is included in the grantor's taxable estate. In the GRAT, the **full value** of the stock gets put back into the grantor's taxable estate if the grantor dies during the GRAT term. Or, some healthy business owners can limit the mortality risk even more by using a so-called self-canceling

installment note (SCIN). Another acronym! The SCIN is a unique animal that allows all of the remaining unpaid principal balance on the note to be canceled automatically (and without estate/gift tax consequences) upon the grantor's death. While death remains inescapable for us all, the SCIN at least avoids the additional insult of losing your tax benefit due to a premature death.

Second, GRATs are pretty inflexible. The IRS tells us how and when the annuity must be paid, with limited room to maneuver. In contrast, IDIT sales have more flexibility. The IRS is still going to require a minimum interest rate on the note. And, if the SCIN feature is added, the IRS will also require an additional "mortality premium," which depends on a number of factors, most notably the age of the grantor when the sale occurs. Depending on prevailing interest rates (which are incredibly low as of the time of this writing) and how and when an owner completes the IDIT sale, the hurdle that must be achieved may only be a few measly percentage points, allowing any growth in the business over that hurdle to pass free from estate and gift taxes. So long as we meet those minimum requirements and otherwise structure the plan appropriately, we have a lot more flexibility in how we structure the sale, including longer note terms (without fear of losing it all due to a premature death) and the ability to utilize some types of alternative payment schedules, the flexibility to make prepayments, etc.

Third, IDITs can do way more than GRATs. As noted above, GRATs exist for a period of time and then disappear. On the other hand, IDITs can be set up, in some cases, to continue in perpetuity—the so-called "dynasty trust." If properly structured, a dynasty IDIT could hold stock in a manner that is not only free from inclusion in your own taxable estate, but also the taxable estates of your children, grandchildren, and beyond. This type of planning is incredibly powerful from a tax standpoint but also full of traps for the unwary. IDITs can also give us additional flexibility to provide for the business owner's spouse and include other provisions designed to provide for and protect the business owner's family and the trusts' assets. There are some important restrictions that need to be navigated, but the IDIT offers a lot of opportunity to achieve a business owner's tax and personal goals.

There's one other fun feature of the IDIT (and other grantor trusts, including GRATs) that's worth pointing out: the business owner gets to pay all of the income taxes on the trust's income during her lifetime! Isn't that exciting?

Hold on. Why is it a "benefit" to pay the income taxes for the trust assets—particularly when the business owner doesn't get the income from those assets anymore? I usually get eye rolls or groans when I share this one with clients. But hear me out on this. If a parent just gives a child cash to pay the child's taxes, that's a taxable gift. We already talked about the limitations on taxable gifts in Part 2 of this series. But if the business owner pays the income taxes generated by the IDIT, it's not a gift because the tax law treats her as owning the IDIT for income tax purposes. Yet the effect is the exact same as giving the kids cash to pay the taxes themselves. It's a handy way to make a gift without it actually counting as a gift for

estate/gift tax purposes, meaning that it won't reduce your estate/gift exemptions or fall within the other gift limitations described in Part 2.

And if our business owner decides one day that she doesn't want to pay the IDIT's income taxes anymore, there's a way to "shut off" this feature, and the trust then starts paying its own income taxes going forward.

One final caveat on IDITs, however. Unlike the GRAT, which is created by the tax code and fairly clear in terms of how you implement it, IDITs are not explicitly sanctioned in the tax code. They've been under attack by the IRS—and targeted by a few presidential administrations—for years. That said, they have been battle-tested in many court cases over the years. Until the law changes, they

work. But they're also dangerous territory for those who don't tread carefully.

Adding in features likes SCINs and dynasty trusts only makes this type of planning even more perilous. So be absolutely certain that you work with advisors who are experienced in this type of planning before embarking on an IDIT strategy. The rules in this area aren't always black-and-white, and you want someone who's been there and done that to guide you through. We've only scratched the surface in this article of all of the issues that need to be considered.

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Over the past few months, we've walked through—in layperson's terms—some highlights of the more common strategies business owners use to transition ownership to the next generation without having to break up the business to pay taxes, but there are many others. We didn't even try to cover everything, and there are many other issues and limitations with each of the strategies we discussed that aren't covered here. There's also a whole host of other business, operational, succession, buy-sell, tax, insurance, financial, and family considerations that need to be addressed before heading down the path of adopting any of these strategies (or others).

There's almost always a push-pull to these things; when you implement a particular strategy, it creates other consequences, which, if not carefully addressed, can make the solution worse than the problem it was intended to solve. In some cases, you absolutely should not implement one of these strategies because it creates other issues. There's no one-size-fits-all solution. And whatever tool you use needs to be specifically tailored to your specific situation. You absolutely need expert advice and guidance before implementing these strategies, or others. This world does not lend itself to DIY or an internet-generated form. You should not be relying on some internet article by a random (ahem) lawyer in Ohio.

While I wish it wasn't the case, these strategies are complicated. They make your head hurt. And they require you to start taking action sooner than you might otherwise want. But when done properly, they work. Don't believe me? I can introduce you to real-life clients who have used each of these strategies to position their businesses for continuation and to provide for their families for generations to come.

And to make things even more complicated, legislation is already pending in Congress that would severely limit or eliminate some of the planning techniques we've talked about. While it's unclear whether and to what extent this legislation will ultimately be adopted, it's clear that we probably have a relatively small window in order to implement some of these strategies. While we never want a tax strategy to dictate a business or personal outcome, now is the time to at least be thinking about the future and whether you should act!

Your business wasn't built in a day. Your succession plan won't be completed in a day. But one bad day (i.e., your untimely death) combined with a failure to plan could mean instantaneous disaster for your business and financial ruin for your family.

If a family transition is part of your goals, it's literally never too early to start. It takes a lot of time and effort...and that's on top of the immense time and effort you already invest in running the business. But if you're willing to invest the time and effort required, the results can be immensely rewarding for you, your family, and all of the people who depend on your business' success.

You can beat the odds. You can successfully transition your business to the next generation in a way that satisfies your personal, business, and financial goals. The next step is up to you.

The People in Your (Dealmakers) Neighborhood: Part 1 – Meet Your CPA


by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice and
Kaz Unalan, Director, Tax & Business Advisory Services with GBQ Partners

If you're like me and grew up watching Sesame Street, you'll no doubt remember this catchy tune. Now that I've got that song stuck in your head, we're going to spend the next few installments of *Anatomy of a Deal* introducing you to some of the professionals who make up the "Dealmakers' Neighborhood" and the specialized expertise, experience, and, most importantly, the value that they bring to the table.

Just like the Sesame Street neighborhood, it takes a number of skilled people to make a deal happen successfully. Anyone who tells you that they're a "one-stop-shop" for all facets of completing a deal is probably not the advisor you want. Remember the old saying: jack of all trades, master of none.

Let's kick off our walk through the Dealmakers' Neighborhood by introducing you to the CPA. Over the years, I've had great experiences with many talented CPAs who truly live and breathe M+A deals on a daily basis...and, unfortunately, some not-so-great experiences with those who don't. In the cases where things haven't gone so well, it's usually because the client's CPA—while clearly possessing great expertise in helping the client with day-to-day needs—wasn't well-versed in the unique issues that present themselves in an M+A transaction. So even buyers and sellers who already have a trusted CPA helping them operationally would be well-served to find a CPA with a specialization in transactions to help navigate an M+A deal.

To help provide some firsthand insight into the CPA's role in transactions, I've invited our friend and deal pro Kaz Unalan from GBQ Partners to share his thoughts on how the right CPA can not only help you get the deal done smoothly, but also add real value to both buyers and sellers.

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Mergers and acquisitions take an immense amount of planning if they are to be successful. No one deal is the same, so having a transaction team full of experts is critical for success. A key member of that team is your CPA. From strategy to execution, the CPA's role is to help identify and mitigate risks related to the transaction.

The CPA's Role

At a high level, the CPA's role is to assist the transaction team to

bridge the gap between financial data presented under Generally Accepted Accounting Principles (GAAP) or other methods to what the practical economic value and risks are. The CPA is also critical in providing value from a tax perspective in identifying efficient tax structures and identifying unknown tax risk. Significant value can be gained or lost on both of these points. The earlier you can get your CPA involved in a transaction the better. Generally speaking, the CPA would perform procedures and/or advise on the following:

+ Potential "deal breakers"
+ Quality of earnings and assets
+ Contingent liabilities
+ Tax structure and diligence
+ Working capital targets/calculations
+ Potential synergies
+ Operational risks and opportunities
+ Assessment of key assumptions in financial projections
+ Appropriate transaction structure and price
+ Issues to address in the definitive agreement

+ Need for hold-backs, escrow, or earn-out provisions
+ Financing strategies

The most common areas in which a CPA would get involved include confirming the integrity of the financial data by providing a "quality of earnings" analysis, quantifying working capital targets, and overseeing tax due diligence and structure.

Quality of earnings analysis (often referred to simply as "Q of E") or financial due diligence is an engagement to validate earnings before interest, taxes, depreciation, and amortization (EBITDA). In very simple terms, the Q of E will confirm the cash flow of the business, which is a main driver of transaction value in most deals. In addition to that, the Q of E will validate the balance sheet, determine if there are unrecorded liabilities, identify customer concentrations/seasonality, adjust for one-time revenue or expenses, etc. The industry, size, and complexity of the business will also dictate focus areas of the Q of E. This information can be helpful in identifying areas of potential risk before they become major deal points.

Working capital targets are another area that can be very complex and full of surprises in the transaction world. Typically in transactions, buyers and sellers arrive at the purchase price by multiplying the selling company's EBITDA by an agreed-upon multiple. Before the deal closes, however, the seller can manage the company's assets and liabilities in ways that reduce the company's future cash flows without affecting its EBITDA or, in turn, the purchase price. To protect the buyer's interest in those future cash flows, many M+A transactions include a working capital target. The working capital target should be defined as part of the agreement, but can be very complex as some deals include/exclude cash, debt or certain assets and liabilities. Your CPA is key in understanding this aspect of the deal to avoid unintended consequences or surprises.

Tax due diligence and structure is another area that the CPA would typically get involved in. Tax diligence is critical to understand what risks may or may not exist from a tax perspective. Typical tax issues uncovered in diligence are unrecorded state and local income tax liabilities, sales/use tax liabilities and uncertain tax positions. I have seen deals come to a screeching halt because of these items. It may require additional holdbacks until the issues are resolved. These items can be dealt with up front and can save time and real dollars.

Tax structuring is an area that can have a meaningful impact to a seller. Understanding the different tax implications of an asset versus a stock sale is a great example of where value can be gained or lost in a deal. Doing extensive tax planning from start to finish to identify implications of structure is key for the seller in understanding after-tax proceeds. This type of consulting can add real value to a deal.

The areas discussed above can be done from both a buy-side or sell-side perspective. Most view these services as something performed by a buyer entering into a transaction; however we are seeing more and more businesses doing these "self-assessments" ***before*** taking their companies to market. This is often referred to as sell-side due diligence. Sell-side due diligence can add significant value to a business by getting "the house in order" prior to a transaction.

How to Find a Deal-Focused CPA

As discussed above, the role of a CPA can encompass many different areas of a transaction. There are many nuances to a deal, so it is extremely important to engage a CPA that has extensive transaction experience. Many business owners have an outside CPA they have used for financial statement audits, tax compliance, or tax consulting, but transactions are a whole different world. There is definitely a role for the legacy CPA to get the transaction team up to speed, help from a historical perspective and assist with some planning, but unless they check all of the boxes below, you should find a CPA partner that does in order to minimize deal risk and maximize your value.

Here's what to look for.

+ **Professional qualifications and deep transaction knowledge and experience** – Having a CPA advisor who has seen and knows deals will avoid costly real-dollar mistakes, avoid deal delays, and add sophistication/credibility to your team. The value provided will more than outweigh the cost.

+ **A full transaction team with deep resources** – Finding a CPA that has the time and resources to dedicate to transactions is critical. Once the process has begun, things move very quickly, so being available, responsive, and knowledgeable is paramount. There is no time to bone up or learn new things related to the transaction. Having a CPA partner with a deep bench and expertise outside of general accounting and tax services is also key. Ancillary issues related to valuation services, state/local taxes, IT, and employee benefits often arise. Your CPA partner should offer those transaction advisory services too.

+ **Previous experience with other transaction professionals** – Transactions are a process and not an event. Your CPA advisor will be part of a team of professionals that is working for your best interest. Being in that world and having a working relationship with others in the transaction space goes a long way in collaborating and making it as smooth as possible in order to get you the best results.

+ **A seamless cultural and relationship fit** – Just like choosing any of your advisors, find someone you are comfortable with and can relate to. Having someone you truly trust who can clearly explain the nuances is key in such a complex event. You want to be comfortable and have a clear understanding of things.

Those on the sell-side already have day jobs, so putting together a transaction team that has the time and expertise to dedicate, navigate and execute a transaction can't be overlooked. The sooner you can select your team and engage them the better, including your CPA advisor.

As you think about choosing the right CPA advisor for a transaction, there is a good analogy to keep in mind. You wouldn't go to your family doctor for a torn ACL, the same way you wouldn't go to your orthopedic surgeon for a cold. So why would choosing your CPA advisor for a transaction be any different?

The People in Your (Dealmakers) Neighborhood: Part 2 – Meet Your Investment Banker

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice and
Andy Male, Managing Director with Citizens Capital Markets

Let's continue our stroll through the Dealmakers' Neighborhood and meet our friendly neighborhood investment banker.

The investment banker fills a critical role in most middle-market deals by organizing the transaction process, developing the go-to-market strategy, getting the right potential buyers at the table, facilitating due diligence and then shepherding the deal to a successful close. While some business owners are hesitant to hire an investment banker, I find that's most often a product of not having a full understanding of the banker's role and the value the banker can provide. I've often found that the best bankers more than pay for themselves by running a process that is designed to maximize transaction value, secure the most favorable terms and ensure a successful closing. Most business owners will sell their business only once; it's worth doing it right.

This month, we're delighted to welcome Andy Male from Citizens Capital Markets, a seasoned deal-making veteran and loyal *Anatomy of a Deal* reader, to share his perspective on the investment banker's role in the M+A world.

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Every year, the end of September presents us with a compelling trade: the reluctant last days of summer in exchange for the exciting first days of the NFL season. Football fans are always happy to make that deal. September also marks the end of the third fiscal quarter and the beginning of the strategic planning season for business owners. For many, these planning sessions include evaluating M+A as a strategic alternative for the first time, particularly given record valuations and the pending risk of higher capital gains tax rates. M+A can be a daunting topic to assess for the uninitiated, replete with questions about how a process works, how to prepare for a process and what role investment bankers play in the process.

Fortunately, there are parallels between M+A and the NFL as outlined below, that business owners can look to for instructive reminders as to how the game of investment banking is played and won. Clock management (aka, market timing) is among the most critical and our predictions for the 2022 M+A season are optimistic. Just as NFL fans returned to stadiums last fall, so were M+A buyers and sellers returning to the capital markets. M+A activity has returned to record levels, and private business owners are again inundated with calls from prospective buyers.

If you choose to explore these discussions, keep the following insights and best practices in mind as you design and execute your game plan.

Mergers + Acquisitions: Rules of the Game

M+A is a dynamic game played on a crowded field between buyer and seller, each supported by a cadre of advisors driven to secure victory for their respective stakeholders. The score is kept in terms of Enterprise Value (EV) and is most often expressed as a multiple of EBITDA (EV divided by EBITDA).

The game's incentives are clear to both parties: sellers want to maximize value, buyers want to minimize risk, and the negotiation process is designed to produce a point of equilibrium between the two. In lower-middle-market M+A (where EVs are less than $500 million), the game is often played between veteran professional buyers and rookie sellers, which can make for lopsided competition (e.g., public company corporate development teams and private equity investors versus multi-generational family business members).

> "Sellers need to engage a team of professional advisors to level the playing field."

As such, sellers need to engage a team of professional advisors to level the playing field. Among the first of these hires is the investment banker, whose job is to design and execute the transaction process. Investment bankers tailor the game plan to meet their clients' objectives, namely maximizing enterprise value, obtaining favorable transaction terms, strengthening certainty of close and ensuring cultural fit. Relative to the NFL, think about M+A as being played over four "quarters": training camp, offense, defense and special teams.

Training Camp: Market Preparation

"TTM EBITDA! Revenue Bridge! R+W, TAM! TAM! TAM! Hut!" When these plays are called throughout the M+A process, your team needs to execute each flawlessly under pressure to win the game. Like in the NFL, however, the game does not start on day one of the process. First, you need to get into shape, learn the playbook and build team chemistry. Welcome to training camp! For the rookies, expect the following:

+ **Getting into Shape:** Kick-Off Meetings and Quality of Earnings. The process begins with a kick-off meeting hosted by the investment banker and entails a thorough review of the company's strategic plan. We meet with the CEO, CFO and other executives to assess the company's historical performance and growth opportunities. Drills we run include SWOT analysis, customer concentration and bottoms-up projection model building. Most transactions include a sell-side quality of earnings (QofE) report, which is conducted by an independent accounting firm. These reports inform the financials that investment bankers use to market the business and are critical for uncovering and addressing potential issues before the game begins. Like in the NFL, we run these drills again, again and again before going to market and our preparation pays off in the form of excellent execution when addressing challenging buyer questions.

+ **Designing the Playbook:** Confidential Information Presentation (CIP). The key selling document of the marketing process is the CIP, which the investment banker drafts in coordination with the company's management team. CIPs clearly and convincingly convey the company's investment highlights to buyers. Popular investment highlights include an unmatched value proposition, a defensible market position, an attractive financial profile with recurring revenue and consistent margins, a veteran leadership team and, most importantly, compelling growth opportunities. Like with NFL playbooks, the CIP is highly confidential, and we protect access to it using confidentiality agreements.

+ **Meeting the Team:** Roles, Responsibilities and Chemistry. In this analogy, the investment bankers are the coaching staff, led by a managing director as head coach and experienced bankers as coordinators and staff. As coaches, your investment bankers design the strategy, run drills and call the plays. At times, you'll be frustrated with your coach for making you run wind sprints, but you know they have your best interests at heart and are obsessed with winning. The company's CEO is the quarterback, the CFO is the running back and the sales executive is the star wide receiver. The company's infrastructure and systems are the offensive line, critical to success. Like NFL fans, these are who the buyers come to see perform. The most direct comparison is that of the owners. Just as NFL owners hire the coach, staff and players, the company owner hires the investment banker and the management team to execute their vision. And, it's the owner who gets handed the trophy at the end. The key to getting that trophy is excellent team chemistry. Just like a team of NFL rookies would not make the Super

Bowl, neither would a team of inexperienced business leaders perform well in M+A. Veteran management teams with chemistry built on trust from years of playing together win the game. Importantly, buyers don't want to be overly sold by the investment banker on an opportunity; they want to see and believe in the management team. As such, build and prepare your management team accordingly to win.

+ **Public Relations:** Managing Communications. Like in the NFL, confidentiality is critical. Bankers limit information sharing to only what is necessary by stage, use code words and execute non-disclosure agreements to minimize the risk of this vital information getting into the wrong hands. Fortunately, unlike the NFL, we don't allow cameras in training camp and there's no "Hard Knocks" crew in the boardroom. When the season starts, like the interactions between NFL players and the press, your team will be asked the same questions again, again and again from buyers. Fortunately, you will be prepared to answer these questions like a seasoned veteran.

Congrats on completing training camp. Your team is ready to go to work. Time for kickoff!

Offense: Marketing the Businesses

The marketing process begins like all NFL season openers: full of hope, confidence and eternal optimism. Fortunately, as a seller, those feelings are warranted because you set the game schedule. One of your investment banker's essential jobs is to advise you on appropriate market timing given industry trends, the company's financial performance and your strategic objectives. Only when those timing dynamics are aligned and our preseason preparation is complete do we start the game. When the game begins, the seller always starts with the ball on offense, driving toward the following milestones:

+ **Teaser and Non-Disclosure Agreement (NDA).** The first series entails the investment banker introducing the opportunity to prospective buyers using an anonymous teaser. The teaser provides enough high-level business and financial data to assess the opportunity while mitigating confidentiality risks. A segment of prospective buyers will pass based on the teaser due to their perception that the opportunity lacks a strategic "angle" for that potential buyer, investment size requirements, timing or other M+A priorities. Buyers that execute the NDA will receive the CIP and instructions for submitting an Indication of Interest.

+ **Indications of Interest (IOI).** The second series entails the investment banker discussing the CIP content with prospective buyers. Over a series of calls, the banker drives home the selling points of the opportunity, the shareholders' objectives, and what a winning bid may look like. The banker issues an IOI process letter, specifying instructions for submitting a letter, including a valuation range (most often expressed as a multiple of EBITDA). Buyers also outline a history of their group, rationale for bidding on the opportunity and reasons why they would be an ideal buyer. The investment banker summarizes these bids into an IOI bid grid on an "apples-to-apples" basis for the seller to review. This drive ends with the seller and banker inviting a select group of bidders to meet with the company in person, a process formally known as Management Presentations.

+ **Management Presentations (MP).** The third series, referred to as "MPs," includes some of the most critical plays of the game. This is the first time sellers meet prospective buyers in person. MPs often include a social element (e.g., private dinner), facility tour and formal presentations by each starting line-up. Buyers give a presentation they have done hundreds of times, providing a history of their group and outlining why they are interested in the opportunity. Next, the sellers formally present the MP, provide facility tours and make clear their transaction objectives. Buyers question the presenters to learn more about the business. Like NFL

rookies in their first game, the first meeting will seem really fast, and they will not answer the questions concisely. By the final meeting, your team will have become a veteran squad, seeing defenders' moves before they happen and answering questions with the aplomb of an All-Pro league star. These meetings often run back-to-back-to-back over a two-week time period, so your team will be tired but feeling good in their accomplishment. This drive ends with the investment banker providing each MP attendee with detailed instructions for submitting a Letter of Intent.

+ **Letters of Intent (LOI).** Your offense's final series, LOIs, produces the final EV scores of the first half. Buyers will be given additional data and time after their MP to submit an LOI. As opposed to an IOI, an LOI is a detailed proposal to purchase the business, including a single Enterprise Value and sources of capital for the transaction (third-party debt, investor equity, rollover equity). You can check out Kegler Brown's other *Anatomy of a Deal* articles for details on these terms. The investment banker presents LOIs on an "apples-to-apples" basis to the seller for review and discussion. After several rounds of negotiation, this series culminates with the seller selecting a single party with which to enter exclusivity and work together to consummate the transaction as agreed to in the LOI.

It is vital for sellers to remember that their point of maximum leverage is just prior to signing a Letter of Intent. After entering exclusivity, leverage shifts to the buyer. Thankfully, your first half has paid off. You have "cleared the market" of prospective bidders, leveraged competition to maximize value and terms and are now in a position to close a transaction with a buyer that meets your criteria. Now, it's time to play defense. Get a drink, take a breath and get ready to play exceptionally well in order to get this deal done as agreed to in the LOI.

Defense: Confirmatory Due Diligence

The buyer begins the second half moving the ball aggressively. Why? Because their exclusivity clock is ticking, a multi-faceted capital structure needs to be constructed, and they have started spending real money on due diligence providers to close this transaction. For the seller, there needs to be seamless coordination between the investment banker and M+A legal counsel, who acts as the seller's defensive coordinator through the close of the transaction. Expect the following second-half plan.

+ **Time on the Clock: 60 Days.** Letters of Intent grant buyers exclusivity for a limited time, typically sixty days, with thirty days being possible in unique circumstances. Ninety days is too long, and should only be necessary in rare circumstances, such as where specific regulatory requirements or exceptional diligence is required.

+ **Second-Half Adjustments: Due Diligence Reports.** As is fair play in M+A, the buyer engages a team of financial and legal advisors to question everything we presented in the first half. An accounting firm will conduct a Quality of Earnings (Q of E) report. A legal team will review customer contracts, organizational documents and past/pending litigation matters. Environmental, market, and technology consultants may also be hired to study the company's position. Each party is looking to uncover potential risks to the buyer, and any material issues discovered could reopen key business negotiation points (e.g., valuation, terms, risk-sharing). At the same time, the buyer's counsel will be negotiating the most important document in the process, the Purchase Agreement.

+ **Purchase Agreements: APA, SPA, TSA, etc.** The purchase agreement is the definitive transaction document. It is informed by the Letter of Intent and supersedes the LOI in terms of enforcement. If a post-transaction issue arises, lawyers will look to the purchase agreement for resolution, not the LOI. As such, it is imperative for the seller to be represented by experienced M+A counsel. Other important documents include operating agreements, a transition services agreement and employment agreements.

+ **Financing Sources: Banks and Equity.** Unlike large corporate buyers that use cash on their balance sheet or an existing revolver to finance transactions, private equity firms rely on third-party financing. Those third-party debt providers conduct their own due diligence, which will require lender presentations. Whereas equity investors are focused on growth and upside, lenders are focused on risk mitigation (cash flow consistency, competitive trends, regulatory risks) and your team will be prepared to answer those questions accordingly.

Special Teams: Closing the Deal

Most M+A transactions come down to the wire. Both teams are battling at the line of scrimmage, engulfed in a cloud of dust. Owners, bankers, lawyers, accountants, wealth advisors and management team members, all there, pushing and waiting for the referee's official call when the whistle blows. Unlike in the NFL, these scrums most often end in a tie with the ball at the 50-yard-line. Both sides

have done great work and discovered the "willing buyer, willing seller" equilibrium.

Unique to M+A, these ties are actually wins, as closing a deal is no small feat. Deals can go awry for many reasons, so keep the following in mind as your team plays the game:

+ **Laces Out!** Both teams need to have M+A industry veterans who know how to execute the fundamentals of a transaction under pressure. Accordingly, the importance of highly experienced M+A bankers and legal counsel cannot be overstated. Counsel is responsible for translating the banker's LOI into a binding legal agreement and knowing how to negotiate the myriad issues that arise throughout diligence. The banker and legal teams work as one to snap, hold and kick the 55-yard game-tying field goal at the end of the game. Both parties need to have the ice-cold demeanor that only comes through deep M+A experience to do so.

+ **Preventing Turnovers.** Like fumbles and interceptions in the NFL, re-trades (i.e., lower valuations) happen in M+A. Why? Missed projections and due diligence surprises are the leading causes. If trailing-twelve-months (TTM) EBITDA trends down post-LOI compared to the CIP projections, the buyer will reopen negotiations. The same is true if an undisclosed liability is uncovered. To prevent such surprises, have a banker run the process so that your management team stays focused on day-to-day operations and the required diligence documents are properly aggregated and disclosed. A good practice is that the management team should continue to plan for and run the business as if no transaction was going to happen.

> "A good practice is that the management team should continue to plan for + run the business as if no transaction was going to happen."

+ **Flea Flickers.** Creativity is essential in M+A. All deals have negotiation issues and there are rarely easy answers. Like in the NFL, the spirit of never giving up until the clock strikes zero is a key to M+A. Work to the end, exhaust all options, and constantly communicate, as you never know how one proposal may break the issue at hand and clear a way for the transaction to close.

The Offseason

Congrats on a great game! You are signing the purchase agreement and the wires will cross immediately thereafter. Where does the money go?

+ **M+A Math.** Like a coach on a locker room chalkboard, your investment banker will walk you through how proceeds calculations work. You will understand how enterprise value, net debt, working capital targets, equity rollover, seller notes, rollovers, escrows, transaction expenses and taxes determine how much cash and other considerations you will receive at close. See Kegler Brown's other *Anatomy of a Deal* articles for details on these topics.

+ **Contract Negotiations.** How do transaction advisors get paid? Investment bankers are paid a contingent success fee that is typically calculated as a percentage of enterprise value with certain minimums and incentives that apply. These fees are paid only if a transaction closes. Lawyers and accountants typically bill hourly and by project, respectively. Buyers and sellers pay their respective fees.

+ **Player Incentives.** The seller's deal team often includes non-equity owners who played a critical role in the transaction. Your investment banker will advise you on appropriate transaction bonuses and other employee incentives for these employees. Eric has also written on these employee incentives before in two parts.

+ **Retirement?** M+A transactions often create generational wealth for sellers, and as such, it is important to work with your personal wealth management team to prepare for this liquidity. If the transaction results in your retirement, it is especially important to make sure you have the appropriate tax strategies and wealth management plans in place. Your investment banker will advise you on when to bring your wealth manager into the M+A process discussions.

Keep these lessons in mind as you contemplate your company's strategic alternatives...and as you watch your favorite team this season. See you on the field!

The People in Your (Dealmakers) Neighborhood: Part 3 – Meet Your Financial Advisor

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice and
Jon Eesley + Clayton Hall, Partners with Windsor Advisory Group

Now let's continue our walk through the Dealmakers Neighborhood by meeting the financial advisor.

We oftentimes have conversations with sellers who are about to sell their businesses and trade the ongoing income stream of the business for the chance to have a Brinks truck back up to their door and unload. But soon after the initial allure of the big, sexy offer wears off, the question soon becomes: Is that going to be enough?

Enter the financial advisor. Most people are generally familiar with the concept of what a typical financial advisor can do, but relatively few understand the full breadth of expertise that a good financial advisor offers and when you'll need a different financial advisor to help with planning for the kind of generational wealth that can come with the sale of a successful business.

To help us better understand all of this, we've invited our friends and financial experts Jon Eesley and Clayton Hall from Windsor Advisory Group to help us dig a little deeper into the role of the financial advisor, particularly for sellers in M+A transactions.

In this article, we'll use the term "financial advisor" broadly just to avoid confusion, but know that there are all kinds of different advisors, with different titles and different areas of expertise, planning tools, investment offerings, etc. It's impossible to cover them all in this short piece. There's a lot of diligence required in order to find and select the right advisor. After all, you had better ***really*** know and trust the advisor you're giving your money to.

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Financial advisors come in all different varieties and are often asked to play many different roles for their clients, ranging from the more traditional investment advice to customized strategic planning for a whole host of personal, family and financial goals that a client may have. There aren't any one-size-fits-all advisors that provide the same levels of service and expertise for all clients.

What does the financial advisor do and why is he/she an important part of my deal team?

When thinking about the role of the financial advisor in the context

of an M+A transaction, it would ideally be something like this.

- **Develop the Plan.** Lead ongoing, high-touch discussions with the client to help develop and refine personal goals and create a strategic plan to accomplish those goals. The key areas to consider are:
    - Personal
    - Business
    - Family
    - Community and charity
- **Ensure the Deal Satisfies the Goals.** Align the deal (or select a deal, when there are multiple options) that best aligns with these goals. In this process, a good advisor also works to reconcile any conflicts between these goals.
- **Focus on Financial Security.** Prepare a plan that is designed to provide continued financial security after the business has been sold. The key question your financial advisor should consider is how much you "need" vs. how much you'll actually get. If there are gaps, then you'll need to consider whether the deal will actually satisfy your goals. Sometimes a deal that looks great at the top line doesn't actually provide sufficient net after-tax proceeds to maintain the client's lifestyle.
- **Understand Tax Planning.** The only financial metric that truly matters is what the client gets to take home. As such, tax planning is critical and will include both income taxes and transfer (gift or estate) taxes. The financial advisor's role in tax planning is to suggest, support and contribute to the various potential tax-planning opportunities that a transaction might provide, and also to recommend other potential areas for tax planning after the transaction closes to help ensure a tax-efficient result for the client.
- **Represent the Client's Personal Needs on the Deal Team.** All of the deal team members (from the CPA to the investment banker) are focused on getting the deal done, and all of them care about achieving the client's goals. However, the financial advisor—as an active member of deal team—has the benefit and responsibility of being the only advisor who is singularly focused on the client's personal goals vs. closing the transaction.

When should I get my financial advisor involved?

Our experience is that the sooner an advisor is brought into a pending transaction, the more he or she can help. That said, we respect that a pitcher throwing a "no hitter" (the pitcher being the business owner in this analogy) shouldn't be distracted with a new coach late in the game. But if brought in early during the process, your financial advisor can provide objective advice around the why, what and how of a potential transaction – all integrated with the owner's personal planning goals. And a good advisor will allow an owner to navigate the transaction with privacy so that vendors aren't hounding them for business based on the owner's new-found liquidity.

How does the financial advisor get paid?

Financial advisors get paid in a variety of ways, each with its own pros and cons. Using WAG as an example, our clients engage us in one of two ways – either a fixed-fee retainer or an "assets under management" (AUM)-based fee. It is important to know that some financial advisors may receive compensation from investment managers or other vehicles in which the advisor places client funds through success fees or referral fees, though Windsor itself earns revenue solely from its clients. Transparency is key here- the seller should absolutely have a full and frank conversation with any potential advisor about how they are compensated and consider what effect those incentives might have on how the advisor behaves and the strategies they recommend.

The People in Your (Dealmakers) Neighborhood: Part 4 – Meet Your Lawyer

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice

We now conclude our walk through the Dealmakers Neighborhood with a look at the role of the attorney. For this section, I've asked... uh...myself...to share some thoughts about the role of the attorney in your next deal.

We all know and love a good lawyer joke. But believe it or not, the right lawyer is not only an indispensable part of your deal team, an experienced deal-focused lawyer is necessary to help you accomplish the two main objectives in any deal: getting the deal done and making sure you actually get the deal you thought you were getting.

So let's dive in and talk about the role of the lawyer on the deal team!

> *"The minute you read something that you can't understand, you can almost be sure that it was drawn up by a lawyer."*
> -Will Rogers

One of my pet peeves is when I'm called in to "write up the paperwork." Part of that is probably my own ego, but it also goes to an even bigger point: clients who see their lawyers as "mere scriveners" or "paper pushers" don't appreciate the value that a good lawyer brings to the deal. While there is certainly an art to drafting legal documents, that's only part of what your lawyer should be doing. More importantly, the lawyer should be advising you about deal structure, negotiation strategy, deal risks, potential post-closing risks and liabilities, tax impacts, and much more.

In a single sentence, the lawyer's job is to get the deal done and to make sure that you get the deal you thought you were getting. For sellers, this means that they get their purchase price and get to keep it with minimal risks of post-closing clawback by the buyer. For buyers, this means that they get the business they thought they were getting, and if the post-closing reality is something different from what they were promised, they have a way of being "made whole."

While that sounds simple, it's not. M+A deals are incredibly complicated and involve a host of substantive issues, ranging from corporate law, to employment law, to environmental law, to tax law, to property law, and much more. You need a legal team that can confidently identify and handle all of these issues in a strategic, coordinated and effective way.

And on top of that, there's a whole other set of skills needed just

to understand how to get a deal done. Once the letter of intent is signed, the lawyers essentially take over responsibility for getting the deal closed. That involves everything from negotiating deal terms, documenting the deal in definitive deal documents, facilitating due diligence, obtaining required approvals, and more. It's not at all uncommon to have a closing checklist that is 10-20 pages in length. All of those steps have to be recognized and completed in the right order, with expert precision.

It's the legal team's job to make sure all of that happens and to be in constant communication with the client to help them understand what's next and what they'll need to do to get to closing. A good deal lawyer not only has to be knowledgeable in the substance of the transaction, he or she must be incredibly skilled at project management and communication.

> *"There are three sorts of lawyers - able, unable, and lamentable."*
> - Robert Smith Surtees

That value mentioned above is only realized when you have the right lawyer and you get him or her involved at the right time. I know it sounds self-serving, but the lawyer should be one of the first people you hire on your deal team. If you wait until after starting an auction process with an investment banker or after a letter of intent is negotiated with a potential buyer, you've probably already limited the value your lawyer can bring to the deal.

I've worked on a number of deals where the client negotiates the letter of intent before getting the lawyer involved. After all, it's non-binding, right? Who cares? Well, you really should care because the letter of intent sets the tone for the whole deal and represents a key point in the seller's deal leverage. If you miss the opportunity to negotiate all of the key considerations at the letter of intent stage, you may well find it's too late to do that later.

In addition, for sellers, there's real value in doing a "dry run" into legal due diligence with your legal team prior to the buyer showing up. Your legal team can help you identify potential issues before they become real issues and help you fix them before they threaten your deal.

And the added bonus? Doing this work with your legal team on the front-end through diligence and the letter of intent negotiations will help your attorneys get the deal done quicker and more efficiently.

A big part of the lawyer's value is the experience of having done dozens of transactions similar to yours. If you view the lawyer as your strategic partner in getting the deal done and let him or her share that wisdom with you from the start, you're much more likely to get to a successful closing with minimal surprises or threats to the deal.

> *"To me a lawyer is basically the person that knows the rules of the country. We're all throwing the dice, playing the game, moving our pieces around the board, but if there's a problem, the lawyer is the only person that has actually read the inside of the top of the box."*
> -Jerry Seinfeld

You don't call a cardiologist for a hangnail, and you don't see a podiatrist for a heart condition. But amazingly enough, I see too many clients using their personal attorneys to negotiate a complicated M+A transaction. While it's understandable that a client would rely on someone with whom they have worked closely over the years and developed a level of trust, they're not doing themselves (or the other side) any favors by bringing someone who's not a deal lawyer into the transaction.

"One of the most important skills your deal lawyer brings to the deal is their knowledge of 'the market' and their experience with what it takes to get deals done."

One of the most important skills your deal lawyer brings to the deal is their knowledge of "the market" and their experience with what it takes to get deals done. Deals often break down when an inexperienced lawyer is arguing for something that isn't normal for these types of deals or doesn't appreciate all of the inter-related aspects of the transaction that all have to be managed. Unfortunately, that dynamic can slow down the process, increase time and costs, or even jeopardize the deal entirely. I've seen all three.

And, believe it or not, sophisticated players in the deal world all prefer that the counterparty be represented by experienced deal counsel. While it seems counterintuitive, they know that good deal

counsel will actually increase the chances of a smooth, successful closing. And isn't that what we're all really after?

So before hiring a lawyer, ask him or her about the types and sizes of deals he or she has done in the past. Ask about his or her experiences in dealing with similar industries and deal dynamics. The lawyer should have total comfort talking about these types of things.

And with any deal of size, a team of lawyers will be needed to get the deal done. No single lawyer can navigate all of the substantive issues that arise and execute all of the intricate steps of the deal in a timely manner on his or her own. Once the deal gets going, things happen quickly and there's a flurry of activity leading up to closing. So, it's important to understand what the entire team looks like and make sure that the firm you hire has the resources to get your deal done quickly, efficiently, and cleanly. Remember, you're ultimately hiring the whole team, not just an individual lawyer.

Finally, there is still a place for your personal attorney on the deal team, even if he or she doesn't specialize in M+A transactions. Most good deal lawyers are accustomed to working with existing counsel. In fact, it's in everyone's interest to leverage their knowledge and history with the company to help with things like due diligence and personal/estate planning. Believe it or not, lawyers actually can play nice together.

And keep in mind that you'll be talking a lot to your lawyer throughout the deal. Make sure you pick someone whom you trust to sweat all of the details and to communicate clearly and effectively (in plain English) throughout every step of the way...added bonus if they have something approaching a human personality.

> *"99% of lawyers give the rest a bad name."*
> -Steven Wright

Now we come to everyone's favorite topic: legal fees. [INSERT FAVORITE LAWYER JOKE ABOUT BILLABLE HOURS HERE].

In most cases, lawyers do charge by the hour for M+A transactions. There are a few reasons for this. First, the lawyers' involvement in the deal can vary greatly from one transaction to another. Indeed, sometimes smaller deals require a heavier lift because of the unique issues involved. In addition, sometimes the lawyer's job as counselor may actually require that your attorney advise you NOT to do a deal that's going in a bad direction. As a result, large success-based fees usually aren't appropriate for the lawyer and can interfere with his or her professional judgment.

However, in certain cases that are properly scoped out, alternative fee arrangements are possible, including flat fees (either for the whole deal or for individual stages of a deal) and hybrid fee arrangements. Fees can also be deferred to coincide with closing, in many cases. A good deal lawyer should be able to talk comfortably about fees and help you understand what you're signing up for. But, at the end of the day, the reality is that deals take on a life of their own, and so fees can vary significantly from one deal to the next.

It's true that lawyers aren't cheap. But, as stated before, the right legal team increases your chances of successfully getting the deal done and making sure that you actually get the deal you expected. Like so many things with life, if it's worth doing the deal, it's worth paying to do it right.

> *"Lawyers work hard and, like us, they're human, many of them."*
> -Dick Cavett

And finally, remember that despite what you may have heard, lawyers are people, too (barely). Show your lawyer a little love once in a while because the good ones really do work very hard to help their clients achieve their goals...which is really what deal-making is all supposed to be about.

...

And with that, we've concluded our stroll through the Dealmakers Neighborhood. No, we didn't hit on all of the specialists that might be called upon to assist in a given deal. Depending on the specifics of the deal, there are a number of other experts that might be called upon to help, including environmental specialists, insurance experts, real estate surveyors, valuation professionals, and more.

If you remember nothing else, just remember that deal-making is a team sport. Assembling the right team early on in the process will greatly increase the odds of achieving a successful deal. And make no mistake: it's equally important that both the buyer and the seller be advised by the right professionals. When just one side to the transaction doesn't have the right team in place, it can quickly gum up the whole process.

Hope to see you soon in the Dealmakers Neighborhood!

Tying it All Together – Exit Planning for Private Companies

by Eric D. Duffee, Director + Co-Chair, Mergers + Acquisitions Practice

It seems obvious, but sometimes it's easy for business owners to forget: every single business owner will exit his or her business someday. That's true for 100% of private company owners. The key question is whether that exit will be carefully planned and orderly, or whether it will be unplanned and chaotic.

For those of us who live and breathe the world of business and succession planning for private companies and their owners on a daily basis, nothing is more challenging—nor more rewarding—than helping a business owner develop and implement a succession plan that achieves his or her personal, business, and financial goals.

I've found that succession planning is more art than science, combining elements of business, accounting, financial planning, law, sociology, family dynamics, psychology, communication, and so much more. And, while it probably goes without saying, no two businesses are the same; no two business owners are the same; and, consequently, no two business succession plans are the same. When I'm asked for our standard business succession plan (something that actually happens sometimes!), I just laugh.

Nonetheless, it's helpful to remind business owners that there are multiple paths they can take, even though each of those paths offers a multitude of different variations. While many business owners have a single plan in mind—often involving a transition within the family—sometimes that's the right plan for that business and family, but oftentimes it's not. In fact, we often find that the best solution for a business owner is something they historically were vehemently opposed to. When we dig deeper, we often find that there's a misunderstanding about what that possible solution actually entails; when the business owner is properly educated, he or she finds that the previously discarded solution is actually perfect for his or her situation. Being educated about your options is always a good thing, regardless of your current personal preferences.

And even for would-be buyers of private companies, understanding the succession planning thought process will help those buyers better position themselves to tailor a solution that might help a business owner achieve his or her succession goals. Seasoned buyers of private companies know that they need to think like private company business owners and usually surround themselves with advisors who are similarly experienced at dealing with private company owners.

While we've talked in much more detail about many of these options in prior installments of this series, I think it's helpful to compile a

listing of each of those exit planning options at a high level, including some of the key considerations involved with each:

1. **Transition to family members:** For many business owners, this is the dream. They love their business and they love their family. Wouldn't it be amazing if the two came together? And keeping the business "in the family" allows for not only the founder's legacy to continue, but it also promises a path toward maintaining the culture and feel of the organization that the founder built. However, a transition within the family is often the toughest to pull off. Family members may not be willing or able to assume the founder's role. The founder may have a difficult time letting go, even if it's what the owner says he or she wants. Key team members may not be on board. And the economics may simply not work, particularly when you factor in the onerous requirements of estate and gift taxes. For all of these reasons (and more!), only about 10% of private companies successfully transition from the first to the second generation. If you're pursuing this path, you really need to be educated and realistic about where family transitions are successful, and where they're not.

   For more in-depth information on family succession planning, you can check out the three-part "crash course" I authored previously (Part I on the most common land mines, Part II on gifting strategy, and Part III on GRATs and IDITs).

2. **Transition to management/partners:** We haven't talked about this option much in this series, although many of the components of such a transaction mirror the conventional M+A transaction. The key difference is the realization that the best and most readily-available buyer for your business may be the management or partners who are already involved in the business and understand it intimately. The flip-side, however, is that these "insiders" may have a harder time accessing the financing that is needed to pay market value to the departing owner. As a result, many exiting business owners pursuing this path end up taking on significant amounts of seller-financing or other forms of delayed payments. While delayed payments can be attractive in some cases, the seller retains the risk of the business' success while not having any involvement in the business. That may be too big a gamble for a retiring business owner who is looking to diversify his or her financial risk.

3. **Transition to employees — the ESOP:** The Employee Stock Ownership Plan (ESOP) provides a means for exiting the business through which the employees (through the ESOP plan) become the "buyer." Sometimes business owners think of the ESOP sale as an alternative to a conventional M+A deal. I think that's a bad idea. ESOPs work well when the economics are right and there's an ownership-minded employee culture and management succession in place to pull it off. They work terribly when any of these ingredients are missing. While ESOPs can offer several tax benefits, those benefits may not be available in certain cases or may be offset by a lower purchase price. Simply put, ESOPs are a great option for some businesses, but certainly not for every business.

4. **Sale to a third-party buyer:** We've talked about this particular strategy frequently throughout this series, so I won't belabor the point here. Sales to third parties provide the greatest (and fastest) path to liquidity and allow the business owner to (in most cases) substantially de-risk his or her nest egg. But third-party sales have their own issues, some of which may depend on whether you're selling to a financial buyer or a strategic buyer. The buyer may require the seller to remain involved in the business, such as through a post-closing employment requirement or an equity rollover, preventing a complete exit. A portion of the purchase price may be subject to an earnout. The buyer may come back after the closing and seek to claw back purchase price through an indemnity claim. The buyer could have an ineffective transition plan

or may upend the company's culture or team. While third-party M+A deals are great for many business owners, not every business is suitable for a third-party sale. And some business owners fear what might happen to the business and the team after they cash out.

5. **Recapitalization:** While there are several different forms, a recapitalization can provide a nifty solution that allows the business owner to "take some chips off the table," while remaining invested in the company. The business owner gets to de-risk a significant portion of his or her investment in the company, but continues his or her investment in the company's future. The recapitalization can be funded by taking on debt to finance a dividend to the owner or by bringing in a new equity partner, each of which brings its own benefits and risks. In most recapitalizations, the seller may retain an operational role in the business...which, of course, could be good or bad depending on the owner's goals. Recapitalizations are often overlooked by many business owners, but are usually worth a look, if for no other reason than to offer an alternative to a conventional third-party sale.

6. **Liquidation:** Most business owners don't think about this one—and don't want to think about this one. And for businesses having a large portion of their value in the form of "goodwill," the liquidation won't make much sense. But for businesses with meaningful physical assets, an orderly liquidation may actually present a cleaner exit. While rare, this option is occasionally worth considering under the right circumstances.

I've been a part of each one of these; I've seen them go well and I've seen them go badly (sometimes, VERY badly). The difference between success and failure? Very often, it's the complete investment of the business owner in planning for a successful transition...identifying his or her goals, resolving conflicts that may exist among the various goals, developing a strategy that achieves those goals to the greatest extent, and committing the time and effort to implementing that strategy.

Does it take a lot of time? Yes. Will it be difficult? Yes. Is it worth it? YES!

The next step is up to you.

Additional Resources

Thank you for taking the time to read the articles featured in this guide that have focused on transitioning your family business. The full Anatomy of a Deal series includes 40+ additional articles that address numerous aspects of deal-making in order to help private company owners better understand the terms, processes, and strategies involved in transitioning their businesses. We invite you to review this complete list of resources:

Material Adverse Effect/Material Adverse Change Clauses
How setting a threshold for acceptable negative effects can have significant benefits for either the seller or buyer, if written correctly.

The Definition of Knowledge
"Seller's Knowledge" and its effects on purchase agreements.

"No Undisclosed Liabilities" Representation
This common piece of nearly any deal is intended to inform the Buyer of possible liabilities that might occur once the deal is closed.

"Full Disclosure" Representation
Is it a "backstop," or is it a "catch-all?" This piece of a deal is meant to root out fraud, but does it really need to exist?

Preparing to Sell Your Company
A collaboration with Jim Lane of Redbank Advisors, this piece guides you through 8 simple steps to help get your company ready for a well-executed future sale.

Closing Adjustments
By the time a transaction is complete, the purchase price may have changed, upward or downward, from the pre-negotiated target. And there can be plenty of reasons why.

What Goes in a Letter of Intent
In collaboration with Josh Curtis of Footprint Capital, this piece details the LOI, which may be non-binding, but is critically important to both sides of a deal.

Recoverable Losses
Even after a deal closes, things can go wrong, and Buyers may look to recover some of their losses – which may or may not be possible.

Caps + Baskets
Both Buyers + Sellers need to be aware of applying caps and baskets – they shift who's at risk and who's liable should certain breaches occur.

Earnouts: Seller + Buyer Beware
Collaborating with Ross Vozar of BDO, this piece wants you to "Prove it," connects expectations with reality, and looks at the traps along the way.

Survival Periods
Pre-closing issues can arise even after closing, which is why both Buyers and Sellers need to stay aware of the survival period.

Potential Deal-Killers
Sometimes, deals die. Maybe it was financing, maybe it was a lack of diligence, but maybe it was preventable. This piece looks at how to avoid deal-killers before they happen.

Material Adverse Effect After the *Akorn* Decision
Reaching back to our very first Anatomy of a Deal, this piece reviews an impactful court decision that finally starts to quantify MAEs.

Transaction Structures – Part 1: Sales
The first in a two-part look at the most common transaction structures, this piece shows how a deal's structure matters to both Buyers and Sellers.

Transaction Structures – Part 2: Mergers
In part two of our look at transaction structures, this piece focuses on mergers, the forms they take, and what makes them different from a sale.

Life Cycle of a Deal
From getting ready to closing the deal, this piece is a step-by-step walkthrough of the typical life cycle of a deal.

Representation + Warranty Insurance
We've talked about contentious negotiations and deals dying before, this piece, a collaboration with Vince Stasiulewicz of Hylant, looks at one way to deal with these risks: getting some insurance.

Employee Incentives - Part 1
Incentives can 1) help retain talent, 2) help fuel growth, and 3) be disastrous if mishandled. This piece focuses on potential tax complications especially for the employee receiving the incentives.

Employee Incentives - Part 2
The second piece in our look at incentives breaks down some of the most typical equity compensation alternatives + examines the pros and cons of each.

Interactions with Third Parties
This month's piece looks at a significant source of risk for transactions: parties who aren't even involved in your deal.

Alternative Transaction Structures
Let's look at 5 other transaction types that give mature companies more specialized options besides just the 100% buyout.

ESOPs
In this month's piece, Eric collaborates with his M+A practice co-chair, Todd Kegler, and goes into detail on Employee Stock Ownership Plans - better known as ESOPs.

Crisis Demands Creativity in M+A
With an economy in freefall and increasingly scarce debt funding available, traditional M+A deals may evolve into more creative alternatives, including so-called "distressed transactions."

The Post-Pandemic Future for M+A Activity
We're seeing signs that, much like the country itself, the M+A market is beginning to "open up" again. The next step is to identify a few key indicators that will confirm that the recovery is indeed here.

I'm Still Standing. Now What?
Businesses that have survived the pandemic don't have time to waste. There are 5 key strategies they need to be considering right now in order to come out the other side a better organization.

Strategic Buyer vs. Financial Buyer
Owners looking to sell typically choose between selling to a "strategic" or "financial buyer. There are 6 key considerations to aid owners in making that decision.

M+A Motivations
From acqui-hiring and deal settlement to business restructuring and legacy planning, there are plenty of lesser-considered drivers that can be the impetus for M+A transactions.

M+A Tax 101
Too many businesses underappreciate the impact that taxes can have on a deal's success, so it's important to debunk many of those unfortunate myths surrounding deal tax.

Due Diligence 101
Buyers and sellers all hate the time and expense of due diligence, but an effective process can often be the difference between a deal closing or falling apart.

Restrictive Covenants: A "Tommy Boy" Case Study
Sellers are often asked to agree not to (a) compete, (a) solicit customers, (c) solicit employees, or (d) share/use confidential information after an M+A deal closes, but what are they really agreeing to do?

Deal Protection
When transactions begin to collapse, buyers and sellers look to key contractual deal protection provisions to understand their options for recovering the time and money already invested in a failing deal.

Anatomy of a Deal's 2021 New Year's Resolutions
With 2020 mercifully in the rear-view mirror, we've got 4 New Year's Resolutions that every business owner should focus on if a potential short- or long-term exit is anywhere on the horizon.

Equity Rollovers 101
Sellers who have dreams of walking away with all-cash proceeds from a sale should be aware that they're likely going to negotiate an equity rollover instead, depending on the type of deal and the buyer's goals.

Oh, Sh*t! Anatomy of an Indemnity Claim
When a buyer feels the seller didn't deliver on its promises post-closing, an indemnity claim can arise. But asserting, litigating and collecting on a claim is harder than it sounds.

Adjustment Disputes
A deal's purchase price can be adjusted post-closing based on a number of factors, at which point disputes often arise.

Post-Closing Integration in a Mad (Men) World
When a deal closes, the leadership team must still address numerous challenges as the two companies integrate operations and merge into one.

Your Definitive Glossary to M+A Jargon

Lawyers use a lot of jargon in the context of a deal; this is what we mean.

Loose Lips: How to Maintain Confidentiality When Pursuing a Deal

Most business owners pursuing a potential transaction are hyper-sensitive to confidentiality concerns. Here are three important considerations.

The Dreaded Fraud Exception

The dreaded "fraud exception" is a massive hole that typical "exclusive remedies" can't close in an M+A deal.

Tying it All Together- Exit Planning for Private Companies

100% of private company owners will exit their business someday, but will the process be carefully planned or chaotic?

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