Past, Present, and Future: Leading Your Company Now and Structuring it for Succession Offit Kurman® Attorneys At Law

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Leadership Defined

"A true leader has the confidence to stand alone, the courage to make tough decisions, and the compassion to listen to the needs of others. He does not set out to be a leader, but becomes one by the equality of his actions and the integrity of his intent."

General Douglas MacArthur



Two Elements to Succession Planning

- 1. Legal buy-sell agreements, mergers, asset purchase agreements, etc.
- 2. Strategic preparing the company for transition, timing, who will be next, training

Which one is more important?

- the strategic element...by a mile



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A Quick Test

Leadership v. Management

Managers are focused on process and working in their business.

Leaders consciously set aside time to look over the horizon and work on their business.



Profile of Good Leadership

(For Purposes of Succession Planning)

- 1. Sets tone and culture by his or her own actions.
- 2. Engages in SMART goal setting (Specific, Measurable, Attainable, Relevant, Timely).
- 3. Always training someone to take their job.

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- 4. Actively and clearly communicates with company personnel.
- 5. Thinks strategically and is not mired down in management detail.



Leadership Transition – What Should You Be Trying to Achieve?

- 1. Efficient process, uninterrupted business
- 2. Continuity for customers/clients
- 3. Stability of culture and process for remaining team
- 4. An achievable plan in which the incoming leadership team is invested
- 5. Your "absence" from the business

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How To Meet the Objectives

- 1. Start making the exit plan early and be transparent about it.
- 2. Make culture something you work on daily.

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- 3. Make time for strategic planning, manage to the plan, and get input from those who will manage that plan.
- 4. Start small and build trust in others so you can walk away when it's time.
- 5. Communicate clearly to avoid confusion about both what is happening and why.



Who Should Step Into the Breach?

- 1. Someone who wants the job (need the passion in order to succeed).
- 2. Experienced (not necessarily educated).
- 3. Depending on the role, a leader and not a manager (managers often deliver process, not results).
- 4. Respected by existing personnel (not necessarily liked).

5. Humble (they're not going to have all the answers). Offit Kurman, P.A. All rights reserved Attorneys At Law

Timing

- 1. Always train your replacement since someone will have to do your job when you are promoted.
- 2. Exit should occur when things are going well so new leaders are given a chance to succeed.
- 3. Transition when support team (lawyer, accountant, insurance broker, banker, etc.) know your business and can support the change.
- 4. Introduce new leaders to your existing relationships before you leave.
- 5. Judge how long it will take to memorialize unique institutional knowledge.

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3 Rules for Transition

- 1. Be patient.
- Understand the plan and that it "never survives first contact with the enemy" – you will have to adapt.
- 3. You will have to transition eventually, so don't give up when it gets hard.

Strategy Guides The Legal Approach

- 1. The legal transaction depends primarily on the issues described in the previous slides and whether new leadership is being promoted from within or joining from an external source
- 2. Buy-Sell Agreements (transition to internal leadership)
- 3. Asset Purchase Agreements (transition to internal or external leadership)
- 4. Stock Purchase Agreement (transition to external leadership)
- 5. Merger (transition to external leadership)

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Buy Sell Agreements

- An agreement between business partners outlining what happens to the shares of then existing business partners if one of the partners dies or leaves the business
- Is worked out in advance (good); but times change (bad)
- Funding and business valuation are usually the biggest challenge in these scenarios
- Can prevent unwanted partners from coming into the picture

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Asset Purchase Agreement

- In an Asset Purchase Agreement, the buyer is usually someone from the "outside" who comes in to buy certain company assets
- The benefit of this type of deal is it can be used to sell off unwanted assets without letting someone in as a partner.
- Can be risky if the sold asset produces revenue that offsets unsold liabilities.
- Sometimes it's difficult to separate out assets to sell example, package that includes government permits



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Stock Purchase Agreement

- In a stock purchase, a party (usually from the outside) simply buys the outstanding and issued stock in the company.
- Can be all or part of the stock, but a majority of the stock must be purchased for them to own the company.
- Results in an influx of cash.
- It can, and often does, result in most things staying the same (name, location, main line of business); but control is lost because the new owners can do as they wish.





- Mergers are simply the combination of two companies into one entity by agreement.
- The "devil is in the details" on mergers, as how it is set up tends to dictate which company survives and is dominant.
- Mergers often happen when one company is struggling and needs the help of another (leadership, finances, etc.)
- Can do mergers without the consent of all of the shareholders, but then again it does not include all the shareholders.



Closing Thoughts

- 1. Good leaders are hard to find, so work to hold onto them once they are in the door.
- 2. Don't just manage your business, find time to lead it.
- 3. Make sure your plan for your company's future includes an idea of who will lead it.
- 4. Let your strategic decisions guide your legal ones.



Thank You

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