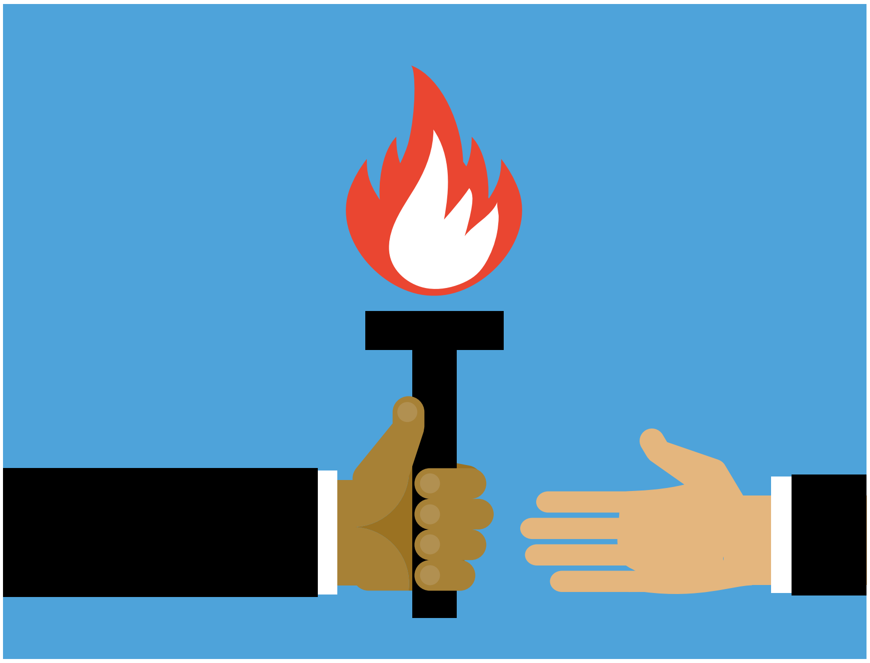

AFTER YOU'RE GONE

How to avoid future chaos with succession planning

BY TED McINTYRE WITH DOUG HENDLER, PARTNER, BLANEY McMURTRY LLP

ARE YOU THINKING OF RETIRING? Of handing over the reins of your business to a family member? A business partner? A management service?

You'd better start contemplating the prospect. Even if the idea of no longer working for a living currently seems as foreign to you as Egyptian hieroglyphics, you should consider what happens if, heaven forbid, you pass away suddenly or contract a debilitating disease. For if no plan has been carefully laid out, you're inviting chaos in your absence.

There are tax reasons to plan in advance, but also practical reasons—making sure your successor is well trained and ready for the job.

Doug Hendler, a partner at Blaney McMurtry LLP in Toronto, has been practicing corporate/commercial and real estate development law for north of 40 years, with succession planning a notable chunk of his responsibilities.

"You've got a very valuable asset and you want to protect its value," cautions Hendler, "and you're not going to do that without planning."

OHB: WHAT'S STEP ONE ON THE SUCCESSION PLAN CHECKLIST?

DOUG HENDLER: Everybody needs a will! And you can't do a boiler plate will, where you simply leave everything to your wife or, failing that, to your children. Businesses are usually more complex than people think.

Trusts are especially appropriate if there's a younger generation that's not ready to step up. You hold the assets in trust for your kids, or for their children. Sometimes part of a succession plan is generation-skipping, where you leave the income to your children but the ultimate capital to your grandchildren to avoid double taxation when you pass. Then when your children pass, it's just one tax.

But there's no automatic, one-size-fits-all checklist—no two situations are identical. And leaving things in trust is all well and good if you have an asset that runs itself. It's very different if you have an active business making widgets or building homes, where there's a whole distribution chain set up and personal relationships. If someone steps in who doesn't know the business, it's potentially disastrous. The odds are you'll have to either sell it or watch the business deteriorate until the point where there's little value remaining.

WHAT'S THE FIRST QUESTION YOU ASK WHEN A CLIENT CONTACTS YOU?

"What do you want to achieve?" Forget about legal issues and everything else. In your best possible world, where do you want to end up? Then you work backwards from there.

I GUESS YOU'D BETTER MAKE SURE YOUR SUCCESSOR REALLY WANTS THE JOB.

Not every child wants to step into their parents' shoes. My father had a business—he owned a real estate business and a men's clothing business in Quebec City—which he was willing to give to me, but I didn't want it and went off to be a lawyer.

The successor also needs to be capable. I'm a lawyer, so I presumably have some brains, but if you asked me to suddenly run a business, I don't have the experience, so what would I do? Either hire the experience or sell the company.

I TAKE IT THAT THINGS CAN GET MESSY NAMING A SUCCESSOR IN A FAMILY-OWNED BUSINESS.

You're usually going to step on toes either way, but I don't offer counselling advice. I just point out the issue to the parent that they have to consider how they want to deal with this. If you have one child, it's easy. But if you have a few kids and one or more want to be involved, that's when they can be at each other's throats.

Many of these businesses, of course, do not have just one owner. I've seen these things come off the rails when two brothers or longtime friends, for example, start a business. They're compatible and successful. But then their kids grow up and want to be involved in the business, and you wind up with conflicts. They might come to me and say, "My brother has these kids who are lazy, incompetent drug dealers, but he's insistent on them being part of the business." And then the other brother comes in and says the same thing about *his* brother's kids. And what happens is that people who got along wonderfully for 25 years end up hating each other. Then one sells his share or they split up the business and go their separate ways. I've seen bitter family wars over succession planning.

EVEN WITH THE BEST-LAID PLANS, THINGS CAN GO WRONG.
The wildcards are always the individuals left with the company. You can have a technically brilliant plan, but if the people start fighting amongst themselves and start suing—which is not uncommon, unfortunately—you end up destroying the value of the company. If the business owner doesn't take his children's/successor's likes, dislikes and personalities into account, you don't know where things are going to end up. It's often impossible to predict.

WHAT ARE SOME OF THE CONSIDERATIONS IF THE NEXT IN LINE DECIDES TO SELL THE COMPANY?
You want to look for strategic buyers—those who will typically pay more, either to eliminate a competitor or to gain access to a market they don't currently have. You have to go through your financial statements very carefully to see what expenses a new buyer might not incur, such as your personal car or a slush fund you've kept. And the buyer might not need your warehouse, or might need less staff because they have some of their own. All of this needs to be factored in so that you can package the sale in a way that will be attractive. Otherwise, you may not get full value and risk having your bones picked clean

YOU'RE NOT JUST PLANNING FOR YOUR FUTURE, BUT THAT OF YOUR COMPANY AS WELL.
That's why it's a good idea to sit down with your accountant and lawyer to not only create a succession plan, but a business plan, so that your successor knows where your business is going and what facets need improvement. It's an area people often ignore and it's not that expensive to do. Sometimes it's good to

make sure your bank or lenders are in the loop, too, so they are comfortable they'll be paid back and that you're not going to squander their security and that the company will be well managed.

IS PART OF A PLAN, ASSUMING YOU RETIRE BEFORE YOU DIE, TO ENSURE A REVENUE STREAM TO LIVE OFF?

If you can afford to hand over the business to your children, great; otherwise you work out a payment arrangement to make sure you're not left eating wieners and beans while your kids are eating cavier and drinking champagne. Most parents work out an arrangement—for example, an estate freeze where they lock in the current value and give all the growth to the next generation in a tax-efficient manner. But they do extract the current value of the business when they retire.

WHAT IS THE COMMON EXCUSE FOR SOMEONE NOT SETTING UP A PLAN EARLIER?

People can't imagine they're ever going to die. They imagine they'll stay healthy and live forever. They often don't deal with this issue until they're forced to or don't have the energy to maintain the business like they imagined they'd be able to do.

I don't tell my clients if or when they need to step down, I tell them their affairs are fairly complicated and we need to organize them. I have a client with a patchwork of companies that are related but do different things, but despite my constant urging he never did a succession plan. He ultimately solved the problem by selling the main parts of the business. But had he not done that, and gotten sick one day, there would have been management and planning required that he couldn't provide. It's one thing to operate a business, but quite another to grow it and to be able to plan for five years or more down the road.

WHAT CAN GO WRONG IF YOU WAIT TO PUT A PLAN IN PLACE?

The process will be unnecessarily chaotic. You might wake up tomorrow and get hit by a bus. For God's sake, plan! **OHB**