

A MODEL FOR SUCCESSFUL FAMILY-BUSINESS TRANSFERS

What could be easier than transferring a family business to its natural successor, the owners' heirs or offspring? If some of your first guesses were peace in the Middle East, ending bureaucratic inefficiency, or the Chicago Cubs winning the next World Series, you have probably witnessed your share of family business transfer disasters.

Statistics, widely quoted by estate planning writers, indicate that only one-third of all family-owned businesses are passed to the second generation, and only ten percent of those are transferred to a third generation. Experience indicates that those statistics, while bleak, are likely overstated.^{1,2}

Pessimism notwithstanding, some family businesses are indeed *successfully* transferred to subsequent generations. For a transfer of business ownership and control from parent to child to be deemed *successful*, however, the parents/owners must achieve all their exit objectives including:

- Financial independence: parents do not rely on the cash flow from the business;
- Intra-family fairness: parents have distributed family wealth, including the businesses, in a way that all family members perceive as fair; and
- Business independence: parents are no longer active in the management of the business. The younger generation has assumed control.

This White Paper describes a model that parents can use to pursue a successful business transfer from one generation to the next. It isn't the only model that works, but because it depends on six carefully chosen elements, it has the potential for a successful completion.

If any of the six elements is missing or compromised, your retirement and the ongoing success of your business may be in jeopardy.

The Model of Success

In the checkered, but always interesting, history of family business transfers, we find that parents hope a child will take over a business for several reasons:

1. The joy of working together. (At least that's what some owners claim.)
2. Greater employment and financial opportunities than those available elsewhere.
3. Maintenance of the family's focal point—the business. Parents see the business as the “glue” that helps the family stick together.
4. Fulfillment of a childhood dream. The child(ren) has grown up in the business, knows it and wants to stay in it by acquiring ownership.
5. Gradual retirement. The owner can stay semi-active in the business by gradually turning over operations and ownership to the next generation.
6. Continued income stream. Parents can maintain an income stream from the business even though they are no longer active. Family members usually swallow this pill more easily than does any other type of owner.
7. Parents believe they can maintain control of the businesses through their children.
8. Family pride. The owner takes considerable (and often justifiable) pride in continuing a family business and tradition.

How can something that sounds so great too often crash into the brick wall of reality? Four reasons come immediately to mind.

1. The children don't get along with each other.
2. The children have substantially different career goals or different visions of the future of the business.
3. The parents did not achieve financial independence *before* transferring the business to the children while the children lobbied hard for significant ownership perhaps *before* they were ready.
4. The children simply don't have the same desire, ambition, or aptitude for running the business as the parents.

Element One

The Seven Step Exit Planning Process™

All business sales or transfers are challenging, but owners wishing to transfer their businesses to children often find themselves in the middle of a battle of epic proportions: their spouses and children (and their spouses) all have opinions about who should get ownership, how much and when they should get it—and they are not at all reluctant to share!

For that reason we recommend that you spend time acquainting yourself with the first element of a successful business exit: The Seven Step Exit

Planning Process™. The process can help you to create an exit that first satisfies your needs and then incorporates the concerns of all family members. Believe it or not, this process can integrate all points of view into a single, unified strategy. It organizes your priorities and can be easily modified to address the many considerations unique to family business transfers.

The greatest threat to successful family business transfers is the failure to focus on the goals and aspirations of the current ownership group—the parents.

Here are the steps in that process:

Step One: Establish/quantify what you want, need and aspire to achieve before, as, and after you exit. In short, what are your exit goals?

Step Two: Accurately calculate: 1) the company's value, 2) its cash flow, and 3) the value of your non-business financial resources.

Step Three: Increase (and protect) the transferable value of your business through a variety of "Value Drivers" including incentive planning for the key employee group and/or business-active child ("BAC").

Step Four: Do nothing to preclude a sale to a third party (as a back-up plan) should the transfer to a child fail through no fault of your own.

Step Five: Carefully design and implement the sale/gift of business interest to your BAC.

Step Six: Put in place contingency plans to ensure the continuation of your business should you or your BAC die before the transfer is complete.

Step Seven: Coordinate your estate and gift planning with your exit plan. Estate planning is often used to address the children's and parental concerns about fairness.

Let's take a quick look at how each step operates in a family business transfer.

Step One: Determining Goals

The greatest threat to successful family business transfers is the failure to focus on the goals and aspirations of the current ownership group—the parents. When every person with a "dog in the fight" believes his or her goals to be worthy of consideration, paralysis and discord can rule the day.

The foundation for any successful business transfer is to deal first with the needs, wants and aspirations of the parent/owner. In family business transfers we must address and fulfill Mom and Dad's goals regarding not only their own financial independence, but also family harmony, fairness to all children and other hard-to-measure, but critically important, goals.

Setting and prioritizing these goals is the first step, but the purpose of

the entire exit planning process is to achieve them.

Step Two: Quantifying Resources

Once we establish where it is you want to go, we quantify (meaning we use the calculations of professionals rather than best guesses) exactly where you are today. To move toward your goals you must know the:

- Value of your company;
- Amount of non-business investment capital you have; and
- Current and likely future cash flow of your company.

Your exit planning advisor uses this information to design a transfer that meets your goals, uses the company's cash flow effectively and manages your tax liability.

Step Three: Growing and Preserving Transferable Value / Cash Flow

Once you know what you want and what you have, we turn our attention to increasing the company's ability to meet your financial goals and the financial goals of your children. Generally, we work to drive up value and cash flow by strengthening or installing Value Drivers. (If you would like to know more about Value Drivers, we can provide you more information.) Key players in this effort are your key employees—including your business-active child. As owners motivate key employees with financial rewards for

increasing business value, so parents reward their BACs with ownership

Step Four: Sale To An Outside Third Party

Step Four is a transfer to an outside third party so it does not apply to family business transfers—with an important exception. As we discuss in Element Six, you must have a backup plan for your exit should the plan to transfer the business to your children prove unworkable.

Step Five: Transfer Of Ownership To Children

In this step, you and your advisors work out the mechanics of transferring ownership to your BAC. The goal of this step is to keep you in control until your child is fully capable of running the company successfully with no help from you.

Step Six: Business Continuity

Not every owner completes the exit they envision. In this step we create a contingency plan to protect the business, the owners and the owners' family should the owner or BAC die or become disabled before ownership is transferred. In addition to the issues we address in all businesses (continuity of management, processes and banking relationships), in family businesses we ask and answer questions that include: 1) Should the BAC

receive the business via a buy-sell agreement or bequest at death? and 2) Should ownership transfer to the surviving spouse before an ultimate transfer to the BAC?

Step Seven: Wealth Preservation Planning

Estate and gift planning is the means parents often use to provide for their non-business active children, but many give away business ownership in the name of estate planning. As you will see in Element Five, we use estate planning to address issues of fairness among family members and to protect business interest from creditors.

Element Two

Parents' Financial Security

In explaining Step One of The Seven Step Exit Planning Process™, (see page 3) we mentioned the absolutely fundamental importance of an owner's financial security and independence to any successful business exit. In sales to third parties, owners achieve financial security upon transfer, but in a transfer of ownership to a child, the owners maintain control while achieving financial independence *before* the transfer of ownership and control to their business-active child.

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Financial security comes in three varieties.

1. Those who have it without looking to the business for any income;
2. Those who can secure it apart from ownership in the business; and
3. Those who have the means to obtain it through business ownership.

Variety 1: Those who have financial security independent of the business can

afford to receive less than full fair market value for their businesses. They have typically attained financial security by investing excess earnings outside the business during their active years.

Variety 2: Those who can secure financial security apart from direct business involvement in the business

typically lease assets back to the business for its use. These assets typically consist of equipment or office, warehouse or manufacturing facilities used by the business. Keeping these types of assets outside the business has several benefits.

1. It provides ongoing, consistent income for you.
2. It lowers the value of the business and reduces transfer (gift or estate taxes) thereby easing the transfer of a business to a BAC.
3. It makes assets (or wealth) available for transfer to inactive children.

4. It protects assets from future creditors of the business after the parent exits.

The difference between this owner and the owner whose financial independence does not rely on the business is that the latter needs the business to continue to generate rental income.

Variety 3: Those who possess the means to achieve financial security through income from the business must maintain control until they attain security. Many experienced advisors share the view that a business owner should not consider—even for a moment—transferring control

(operational or ownership) before achieving financial security. If you wish to leave the business before you have attained financial independence, your BAC must obtain financing in order to pay cash for your ownership interest.

Owners in this situation must begin the transfer process long before they wish to retire. Under the best of circumstances, they must prime the pump: A child must receive significant ownership *before* acquiring the balance of the company for cash via bank financing

If the transfer is to occur over an extended period of time, it is vital that you retain ultimate control and subject any

stock transferred to the child to a buy-back agreement should the child leave for any reason. In this agreement you assume the obligation to repurchase any interest from a departing BAC so that, if that child chooses not to complete the buy-in

process, you can execute your backup plan. (See Element Six.)

Which variety do you prefer?

Only you can determine which variety of financial security you prefer. Keep in mind that even if your financial security does not depend on receiving full market value for your business, your choices are: a) insist on it, b) transfer the business to children based on “merit,” or c)

accept the fact that by accepting less you are giving away at least a part of your business.

Once you start giving things away, the fairness issue rears its head. If you don’t manage fairness issues through your estate planning documents, whatever you do will be unacceptable to *some* of your children. (And you may already know which ones...)

Selling a business, over time, for little or no cash to the business-active child is not a definition of financial security. Too many owners take this course of action: one that is tax costly,

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Element Three

A Capable Successor, Prepared Business And Ready Owner Capable Successor.

The child you designate as your successor must *demonstrate both the capability and willingness* to run the business over a significant time period prior to your departure.

How do you assess whether a child is capable of and willing to run and own a business? An informal indicator is twofold: 1) your willingness to take extended vacations without calling the business “just to check up on things,” and 2) learning that “things” are just fine.

While this test works fairly well in a small shop for a fairly limited period of time, it is not appropriate for larger companies over long periods of time. Having a child who can manage only the daily operations of a business is not the same as having one who can nurture growth, anticipate future competition and navigate during economic downturns. The second type is the one you want to succeed you.

While the responsibility for a steadily increasing level of competence and leadership rests on the shoulders of the successor child, what have you done to

prepare the business to function and grow without you?

Prepared Business. The business must be capable of moving forward without your guidance, leadership or access to your wallet. All too often blame for family transfer failures is pinned on the would-be successor when most of it, if it were to be apportioned fairly, rests on the owners and their failure to create companies with long-term viability without the owners’ continued involvement.

Ready Owner. Remember the emphasis on creating transferable value in Step Three of The Seven Step Exit Planning Process™ (Element One)? Transferable value is vital not only for transfers to outsiders (third parties) but also in transfers to insiders (key employees and family members). Your child(ren) must be ready, willing and able; but so must you be ready and willing for the transition.

A parent/owner’s job is to prepare a successor child for future responsibilities as they would any key employee: increase levels of responsibility, provide ongoing education, delegate authority and offer leadership training. Consider having your child join a peer-to-peer group (such as Vistage®) or take advantage of membership in a regional family business center. Your advisors can be hugely valuable in creating a program to help you prepare a child for ownership.

Element Four
Ownership Based On Merit, Not
Emotion

Blood may be thicker than water, but it doesn't sustain a healthy family business transfer. Let's consider two scenarios.

Ideal and Rare. These owners had the foresight to avoid the inherent difficulty in having multiple children, but only one company: they sired but one child. Further, that child is capable, ambitious and wants ownership. Transferring a business to this only child makes sense and isn't that difficult to accomplish.

Real and Common. Owners have one business but more than one child. This situation can play out in one of two ways:

1) All children are active in the business. In this case, the predominant issue is to determine how multiple children will share the control and ownership of one company.

2) One child (or several) are active in the business and one (or several) are not. How do you give the business (or at least a controlling interest) to the BAC—*provided they merit it*—while being fair to everyone else?

Performance standards. If your BAC does not merit the business, you know it and so do your other children. If you transfer the business to this BAC, your

other children will see it as nothing more than a gift. In their opinion, they should receive (at the same time as you “give” ownership to their sibling) the same gift or a gift of equal value.

We recommend that parents extract themselves from any real or imagined game of “playing favorites” by setting objective performance standards. We commonly use performance standards to motivate (and reward) management and key employees to increase enterprise value and cash flow over time. If the standard is met, the key employee receives, generally, a cash bonus. Similarly, if a child meets performance standards, the child's reward is ownership in the business.

Performance standards can be designed in an infinite number of ways to reward children and can be used to *allocate ownership* among active children.

For example, if one child is president of the company

or a division, the performance standard (for the award of a stock bonus, perhaps) might relate to the company or division reaching a revenue or market-share target, cash-flow level, industry benchmark or other goal. The child who achieves the performance standard receives the award while other BACs receive awards if they reach and surpass their own performance standards.

We recommend that parents extract themselves from any real or imagined game of “playing favorites” by setting objective performance standards.

We can provide ideas on standards and designs suited to your business, but here are a few basics.

Standards should:

- Be written,
- Be attainable,
- Be tied closely to increasing business value,
- Describe exactly attributes and performance expected from any key employee seeking ownership and
- Be communicated clearly.

These standards control the incremental awards of ownership over a multi-year (typically five- to ten-year) time span. As standards are met, the child earns and is awarded ownership via stock bonus, gift or purchase.

One of the valuable byproducts of performance standards is that the child who meets or exceeds them effectively demonstrates her ability to operate the business successfully. Another is that the BAC earns ownership under the same terms as would a non-child key employee.

Objective measurements buttress the BAC's position (if necessary) that the parents' estate (apportioned by gift or inheritance) should not include the business interest owned or promised to the BAC.

Performance standards also take the wind out of the sails of non-business-active children who may demand that

offsetting assets be transferred to them in an amount equal to the "gift" of ownership to the BAC.

Can Ownership Be Shared?

As you think about your business and your children, there are several indicators that your children might be able to share ownership.

- Each child views the business success through the eyes of the family and each of its members, rather than exclusively through his or her eyes.
- One child has effective day-to-day control over business operations. Usually control is granted to that child, not because of stock ownership, but because of the child's experience and leadership abilities.
- Each child's salary is based upon job description and performance.
- Children have been active (alongside parents) in the business long enough to make each child comfortable with the role each plays within the business.
- The business is large (and profitable) enough to support all children and give each child a separate area of responsibility.
- Alternatively, the business must be large enough to:
 - a) Be considered an investment (mature, solvent, and stable),

- b) Be run by non-family managers as well as one or more children,
- and
- c) Have sufficient cash flow to handsomely reward the BAC while providing an income stream to other children who are simply passive investors.

Element Five

Fairness: To All Children

Most parents have a natural inclination to distribute every asset equally to all children. The thought of giving one asset, and very likely the most valuable asset, to one child is considered unequal and therefore, unfair to the other children.

Yet, upon closer examination, leaving the business to the business-active child and making an equitable distribution of the balance of family assets to the inactive children (and perhaps to the BAC as well) is likely the fairest plan of all.

“Fair” in this context is usually a judgment *parents* make about what they think is fair to their children. They overlook that children make their own judgments about what is fair. This second perspective is all too often missing in family transition planning.

To define fair, let’s look at three important points of view: the business-

active child and the inactive child and the IRS.

The Business-Active Child

First, you probably offered all of your children an equal opportunity to participate in the business and become owners. Yet, only one child seized that opportunity. Why would you force the most ambitious, risk-oriented child — the one who chose to succeed you—to share the rewards with children who chose different, perhaps less risky and arduous, career

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paths? Instead, why not reward the successful efforts of the BAC to increase the value of the business?

Second, owners who have no co-owners generally prefer to operate their businesses as they see fit. As an entrepreneurial “chip off the old block,” your child doesn’t want to share ownership any more than you did.

Finally, if you are tempted to dilute control among several children, a controlling vote is not enough! When there are co-owners, the child running the business has a fiduciary duty of fairness to the other sibling-owners, and minority owners who have protections and recourse to remedies. Courts are not reluctant to enforce, and perhaps expand on, shareholder rights. Draconian judgments are child’s play compared to the wrath of

sibling-owners who resent the use of their share of the profits without their consent.

The Business-Inactive Child

With very few exceptions, inactive children don't want business ownership if:

- They are offered other choices; and
- They know they will receive their inheritance when both parents die.

That's a bold statement so let's look at it more closely.

- Inactive children generally prefer to own, or receive, assets that are more liquid and carry less risk than ownership in a closely held business.
- If inactive children own part of a business, have they received anything of real value? They cannot make any decisions regarding its future course.
- As partial owners, inactive children are the proud owners of an illiquid security that generates no immediate income or other benefits.
- Inactive children have no ability to sell their interest, except to the business-active child. Yet, that's hardly a problem since the BAC will not, in all likelihood, have the money to purchase it. And, if she does, the BAC's idea of fair market value is likely to differ dramatically from that of the inactive child.

The IRS

Based on these arguments, it would seem that the inactive child's ownership interest would have little value. The (now friendlier?) IRS begs to disagree. While a non-controlling ownership interest can certainly be discounted in value, it will nevertheless rise in value as the overall business value increases (due to the efforts of the BAC). Because it is difficult for inactive children to get rid of the ownership, they have to deal with the tax consequences.

Challenges To A Fair Solution

If only the business-active child owns the business, how do you treat the business inactive child(ren) fairly? The challenges include:

- The value of the business may be significantly greater than the combined value of your remaining family assets.
- If part of the business value is attributable to the business-active child's efforts, is it not fair to consider that part of the business to be that child's interest before you make an assessment of the gift? How can the BAC's contribution to existing business value be determined?
- And let's not forget the timing issue. It makes good business as well as income-tax and estate-tax sense for owners to transfer a significant

amount of their businesses to the BAC during their lifetimes. Inactive children, however, will not likely receive *their share* of the family wealth until after the parents die. The reason for this is simple: the parents usually retain non-business assets to provide lifetime income and financial security.

The resulting timing difference is mitigated by the liquidity difference in the assets the children receive. The BAC may receive assets now but those assets are highly illiquid and subject to business risk. The inactive children may have to wait, but the assets they receive will be highly liquid and relatively risk-free.

Adding to the difficulty of distributing business and non-business assets fairly is judging the BAC's contributions to the business' value and the parents' ability to achieve their exit goals. Ask yourself the following questions:

1. Is the BAC, in effect, paying for the business now through "sweat-equity" (lowered compensation, more working hours, and greater risk)? If so, the current gift is not really a gift, but recognition of that child's efforts.
2. Is the BAC paying hard-earned cash for part or all of the

business? Are you asking her to pay cash for value she created?

3. Is the BAC adding to the business's value through her efforts? If so, she should not have to pay for that effort by receiving a reduced share of the ultimate estate.
4. Has the BAC, by continuing in the business after your retirement, become a critical element in your retirement plan? The BAC is likely responsible for ensuring that the business can pay you deferred compensation and purchase your stock. In that case, the means by which you tie a BAC to the business—golden handcuffs—may be the transfer of stock. In allocating non-business assets, will you penalize your BAC who has secured your exit? Expect to hear that question from your business-active child.
5. How do the BAC's contributions affect the allocation of business and non-business assets among all children, including the BAC?

How can parents overcome these formidable challenges?

Solving The Fairness Conundrum

For most families, solutions ultimately involve a distinction between fairness and equality. Because there are real differences in various children's contributions to the business and in the timing and risk associated with the assets being gifted, it is imperative that *gifts be fair, but not necessarily equal.*

As a standard, "fairness" is hardly objective. Each child defines fair in terms of what the other children get and how that child perceives what she deserves compared to what others deserve. Not surprisingly, definitions of fairness vary. If you allow different perspectives of fairness to simmer or control family discussions, expect indecision, division, squabbles and possibly, all-out war.

You and your spouse must define fairness taking into account the perspectives of all of your children. Sorry, but there's no way to avoid this decision, except to punt: sell the business to an outsider and ultimately divide the cash.

Once you have defined fairness you must explain that definition and how you will achieve it *to all of your children.* Often (if not always), it is best to hold a

family meeting facilitated by an experienced advisor. Understand that your

definition of fair is likely to differ from those of other family members. Include in your discussion of fairness the concept of merit—the objective basis for transferring business ownership.

Finally, we suggest that you make the appropriate adjustments in your will, trusts and buy-sell agreements to apportion assets if you don't live to complete your lifetime transfers of the business and other assets. The coordination of estate plan and exit plan is critical because when children are left out of

ownership or think they've been treated unfairly, they will create problems for everyone involved even before parents die

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Element Six

Backup Plans For You And Successor Owners

As one prepares for intergenerational business transfers any number of things can go wrong. That is why having a two-part backup plan is crucial: one for you and one for your business.

Backup Plan for Parent/Owner

Let's look at the most common reasons to create a "Plan B" for you.

If you die or become incapacitated before the business transfer is complete, your estate plan (wills and trusts) must effect the transfer to the child(ren) of your choice. If your business is so valuable that your child cannot financially manage a buyout, you must be prepared to offer the business for sale to a third party.

Even if a child is able to acquire ownership of a highly valuable business, can you provide assets of appropriate value to your other children? Fairness, as you have defined it, is a crucial element for a successful transfer.

Similarly, some businesses become too complex or too sophisticated for any one person to run and control. No child can be expected to shoulder that burden successfully. If you've not been successful in creating a professional management team to operate your company for the benefit of your family, your best alternative is to sell to a third party.

As time passes, you may learn that your BAC does not possess the drive or interest necessary to run the business successfully. Their desire to please may have blinded you to the child's lack of ability or willingness to assume risk. Or, the BAC may not have fully understood the personal and financial sacrifices

necessary to maintain the success of the business. Again, a sale to a third party, or to management may be a better option.

Finally, as parents and child move through the transfer process, substantial differences in management style and practices can emerge. Sometimes these differences can be overcome but often they are so great that the transfer cannot be completed. If the transfer falters, the company must reacquire the BAC's ownership interest at the lowest defensible price. This is best accomplished through binding buy-back agreements between the company and business-active children.

Backup Plan for Successor Owners

Has your exit strategy created a ticking time bomb for the new owners (your children) and your extended family that will explode after you leave? This is more than a remote possibility if there are multiple new owners.

What happens if:

- The kids can't share the business after all? The new owners (children) should have their own backup plans should one child leave (on good or bad terms) after you've transferred ownership.
- One child wishes to transfer ownership to his or her children, but the other BACs object to any transfer that doesn't first give them the right to acquire ownership?

- A majority of the new owners wants to sell, but one child/owner objects?
- A business-owning child divorces a spouse?
- The business-owning children disagree on the future path of the company?
- The new owners decide to sell the company for a windfall (compared to the price they paid for it) within a few years of assuming ownership?

These questions, and many more, are best addressed *before* children receive substantial ownership. The answers are incorporated into agreements (such as buy-sell agreements among the incoming owners) between them and you. For example you, or your estate, may want to retain a first-right-of-refusal should one or more of the above situations occur.

One event is likelier to occur than the others: the divorce of a child who has received, by gift or otherwise, ownership of the company *or* ownership of family assets. We use trusts and other entities to protect the business and other assets from an involuntary transfer of ownership and attacks from creditors (including ex-spouses). Many of these tools also serve to avoid or minimize estate taxes for your children and their heirs.

Backup plans are part of comprehensive planning for family-owned enterprises, owners and their families.

Summary

Successful family business transfers are the result of six basic elements:

1. First and foremost a written exit plan for you, the owner, describing how and what is to be executed, by whom and by when, designed to achieve your goals and aspirations for you and your business.
2. A foundation in both financial independence for you and your spouse and in the attainment of all of the goals you have set for you and for your business before, as, and after, you exit.
3. A capable and tested successor owner,, a business no longer dependent on you for its continued success, and a ready owner (you!) gladly willing to transfer management, operations and ownership.
4. A well-communicated, written ownership transition plan based on the successor-child's contributions to the business.
5. A well-communicated plan to ultimately allocate, all of the family's assets in a way that you, the parents, determine to be fair. That plan may, but is not required to, have the full agreement and concurrence of your children.
6. The ability to change course if the transfer to children falters or fails for any reason.

Conclusion

To pull all of these elements together, owners and families require the assistance of advisors who know how to create transfer structures to support and meet the many (and often competing) needs of family members. Further, you need experienced legal assistance in creating an estate plan that reinforces your exit/transfer plan.

Successful family business transfers are simply too complex for anyone to orchestrate alone. Assemble the right team of advisors and focus on the elements described in this White Paper and you are on the road to a transfer that leaves you financially secure and your family's bonds strong.

This material was prepared by Business Enterprise Institute

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1. <http://www.familybusinessinstitute.com/index.php/Succession-Planning/>
2. <https://www.wealthcounsel.com/Free-Resources/Why%20Most-Families-Lose-Their-Wealth-by-the-Third-Generation/>