

Newsletter



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Turning Over the Keys to Your Business



By: Jeffrey T. Bedingfield

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We've all heard the saying that there are only two things in life that are certain – death and taxes. The same might be said for your business that you've spent a good part of your life building. The difference is that the death of a business can be delayed or avoided all together and that depends upon how well you plan the passing of the business to a partner or the next generation.

Only about 30% of family businesses survive into the second generation and only about 12% into the third generation. For the most part, failures can be traced to one factor, little or no succession planning.

Succession planning, or, should I say, successful succession planning really boils down to creating continuity in management, culture and leadership in the midst of a change in ownership. It isn't accomplished at an annual retreat or a planning session with an attorney, accountant or financial planner. It is developed and executed over a period of years.

Planning for a transition in the ownership of a family business has its own unique set of difficulties because you add family dynamics to the business dynamics.

There are several key components to developing a successful plan that deals with family dynamics separately from the business dynamics. The key components to the development of a successful plan that deal with family dynamics are communication and trust. The key components to the development of a successful plan addressing business dynamics include culture, management and leadership.

The culture of a business is what defines that business internally and externally. It is the value system of the company and it establishes the reputation of the company within itself and the community. It defines the vision and goals of the company. Culture is what attracts and retains employees and customers. We all know that a

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Congratulations to attorneys Jennifer Lynn Peters and Nathaniel Wallshein



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Jennifer was
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The Matthews House

Nate has been
appointed to
serve on the
board of The
Matthews
House.



Meet OBP's Newest Members



Don Hoff—Don's focus is on real estate transactions, wills, trusts, estate planning and probate administration. He also works in municipal law, having represented numerous small towns in Weld County over the years. Don received his undergraduate degree and his law degree from the University of North Dakota. Don is admitted to practice in Colorado, North Dakota and the United States District Court for the District of CO. Don previously served as a Municipal Judge for various municipalities in Weld County for more than 25 years and has served as a Town Attorney for more than 35 years.



Joan Gale—Joan serves as the legal assistant for Don Hoff. She has over 35 years of legal experience providing freelance legal support services through Legal Works as well as working for several law offices in Greeley. She has an Associate in Arts degree from Aims and attained Certified Legal Assistant status through NALA. Joan enjoys camping, hiking and fishing in the Colorado mountains.



Katie Butler—Katie is a member of our business and transaction team. She graduated from the University of Arkansas School of Law. Before joining Otis, Bedingfield & Peters, she was In House Counsel for CrossFit, Inc., where she managed a large international trademark portfolio. Katie also served as a law clerk to the City Prosecutor in the home of her Alma Mater where she prosecuted misdemeanors and minor felony offenses.

Turning Over the Keys to Your Family Business (Continued)

big part of the reason why people do business with you is because they like you. Whether or not they like you more often than not depends upon culture.

Management of a company is not so much about who owns the company, but who will do the work of the business that makes it successful. The four areas of focus for management include administration and finance, operations and customer fulfillment, sales and marketing. More often than not in a family business, several of those areas are handled by you or another family member. While you may have developed the ability to handle each of those areas as you grew your business, turning over the reins of management of the company you've built requires that any person taking over one of those areas has the ability to hit the ground running. Before any business can be transitioned to the next generation, you must train those who will take over your responsibilities. You may be able to fill some areas with family

members, but you might have to fill gaps in other positions with outsiders. More than likely, you are the individual who provides the leadership for the company and are the individual to whom everybody looks for direction. Before you can transition out of the business, you will need to find the individual or team who will take on that leadership role and give them the opportunity to position themselves in the eyes of all employees as the source of leadership and direction moving forward.

Assessing the abilities and competencies of employees and family members is a critical, but often awkward, part of succession planning. Not only must you find the right people, you must give them enough time to grow into their positions. Simply reaching a certain point in life and turning to a child and telling them that "it's now your turn to make it or break it," is a sure recipe for failure.

Finally, once the culture is clearly established,

strong management is trained and in place, and leadership is established, you will have reached the point of being able to successfully "pass the baton" of ownership to the next generation. This is the point at which you complete the plan and set in motion your release of ultimate control to the next generation, whether in stages or all at once. Obviously, some control will be relinquished through developing and empowering management and allowing others to develop in leadership roles, but a change in ownership is really the transitioning of the ultimate control and responsibility for the business. A succession plan is as unique as each business and the owners of that business. There are many different tools available to the professional helping you develop your succession plan.

They involve not only the structures for change in ownership, but also for providing incentives to retain key management and leadership and

policies to create loyal employees.

The additional and unique nature of family dynamics in a business succession plan are more often than not accomplished through clear communication of the plan and the building of trust that the plan will be followed. Before the next generation can buy into any succession plan, they must first understand what that plan is. In addition, trust that the plan will be followed and executed can only be accomplished by the business owner fulfilling the promises and goals established by such a plan. Successful business succession planning is really most about preparation, common sense, communication and execution. It takes commitment to develop a plan and even greater commitment to follow it.

-By: Jeffrey T. Bedingfield

Do I Have To Go Through Probate? (And What Is Probate Anyway?)



By: Lee J. Morehead

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In Colorado, whether or not probate is required depends on the type and value of the property a deceased person ("decedent") owns when they die. All of a decedent's property is classified as either probate or non-probate property. Generally, non-probate property includes property owned in joint tenancy with others, life insurance proceeds, contracts with payable-on-death (POD) provisions, and property owned by a trust. Probate property on the other hand is property owned by the decedent individually or with others but not in joint tenancy. As the name implies, nonprobate property is not part of any probate. If a decedent owns only nonprobate property, then there is nothing to probate and you do not have to go through probate.

If a decedent owns any probate property, however, whether you have to go through probate depends on the type and value of the probate property. If any of the probate property is real property, then you have to go through probate. Real property is principally land and buildings. If none of the probate property is real property, then the value of the probate property determines if you have to go through probate. If the probate property is worth less than \$64,000.00, then you do not have to go through probate. Instead, the probate property may be distributed using an affidavit. The \$64,000.00 threshold is accurate for 2015 and changes annually based on the consumer price index.

If probate is required, don't despair. Probate is simply a statutory process to finalize the decedent's affairs because the decedent is not here to do it on their own. Finalizing a decedent's affairs includes collecting the decedent's probate property, using that property to settle the decedent's debts, and distributing the rest to those who are entitled ("beneficiaries"). Because the decedent is not here, a court appoints someone, called the personal representative, to finalize the

decedent's affairs under the court's supervision. The personal representative has a fiduciary obligation to the decedent's creditors and beneficiaries to hold the decedent's probate property for their benefit. Probate ensures creditors and beneficiaries do not end up with more or less property than they should.

To start a probate, an interested person files a petition with the district court for the county in which the decedent last resided. An interested person includes the decedent's spouse, children, beneficiaries and creditors. The petition, among other things, nominates someone to be the personal representative. Colorado law prioritizes who may serve as the personal representative with the highest priority going to whomever the decedent nominated in their will. If there is a will, the original must be lodged with the court. If the decedent did not have a will, the next highest priority is the decedent's spouse, followed by any beneficiary, the decedent's heirs, and lastly the decedent's creditors. After the petition is filed, the court will appoint someone as the personal representative and issue letters showing the court authorizes the personal representative to handle the decedent's affairs.

Part of the petition is to elect between formal or informal probate. Formal probate has more court oversight of the personal representative compared to an informal probate. It is up to the person filing the petition to decide between formal or informal probate.

Once appointed, the personal representative informs the beneficiaries and the decedent's creditors of the probate and appointment. The Decedent's creditors then have four months to let the personal representative know if the decedent died with debt. The personal representative then collects the decedent's probate property and files a list of that property with estimated values with the court. By the end of the four months, the personal representative knows about all of the decedent's probate property and all of the decedent's debts. The personal representative then settles the debts using the decedent's probate property. If the probate is formal, the personal representative may need prior court approval before settling any debts.

Once the debts are settled, the personal representative distributes the decedent's remaining probate property to the beneficiaries. If the probate proceeding is

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Attorney Spotlight

Corey holds a BA in History from the University of California, Berkeley and earned his J.D. from Pepperdine University School of Law, where he focused on estate and tax planning.

During his tenure at Pepperdine University, Corey worked in-house at a global fixed-income investment firm in London, a litigation and transactional firm in Denver, and with the Los Angeles County District Attorney's Office Hardcore Gang Division. He also served as a fellow for Pepperdine's Geoffrey H. Palmer Center for Entrepreneurship and the Law.

His practice at OBP focuses on business and real estate transactions and estate planning.





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Do I Have To Go Through Probate? (And What Is Probate Anyway?) (Continued)

formal, the personal representative may need prior court approval. The personal representative will distribute the probate property according to the will, but if there is no will, then pursuant to statute described below.

- The decedent's spouse inherits everything if (1) the decedent died without parent or child, or (2) all of the decedent's children are the only children of the spouse.
- The decedent's children inherit everything if the decedent died without a spouse.
- The decedent's parents inherit everything if the decedent died without a spouse or child. The decedent's siblings inherit everything if the decedent also died without a parent.
- The spouse inherits the first \$335,000 worth of probate property plus 75% of the remainder if the decedent died without a child but was survived by a parent. The parent inherits the rest.
- The spouse inherits the first \$251,000 worth of probate property plus 50% of the remainder if all of the decedent's children are also children of the spouse, but the spouse has children that are not children of the decedent. The decedent's children inherit the rest.
- The spouse inherits the first \$167,000 worth of probate property plus 50% of the remainder if any of the decedent's children are not

children of the spouse. The decedent's children inherit the rest.

The amounts above are accurate for 2015 and change annually based on the consumer price index.

Once the remaining probate property is distributed, the probate case may be closed. The process for closing the probate depends on whether the probate is formal or informal. One year after closing the probate case, the personal representative is relieved of the obligation to handle and care for the probate property for the benefit of the creditors and beneficiaries.

-By: Lee J. Morehead

Otis, Bedingfield & Peters is proud to announce the promotion of attorney Lee J. Morehead to Senior Associate with the firm. This promotion recognizes the outstanding contribution Lee has made to the firm.



Otis, Bedingfield & Peters, LLC

The attorneys at OBP are recognized leaders in real estate law and business law. We advocate for individuals, businesses, and families in the Northern Colorado region. Our clients are landowners, business owners, business professionals, businesses of all sizes, and individual families in need of guidance or representation in court proceedings involving commercial real estate or business issues

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