

A PLAIN ENGLISH GUIDE TO



>>FAMILY BUSINESS SUCCESSION PLANNING

The issue of succession planning for family businesses is critical. In fact, research shows that more than 65% of family businesses fail in the hands of the second generation, and another 20% fail when the business passes to the third generation. Other research has looked at the causes for these failures and has identified a number of common causes. Given the number of family businesses in Australia, the failure rate is serious and it is important that families address the issues within their family companies.

>> Most common cause of business failure

The most common cause of business failure in the succession process is conflict within the family. Other possible causes relate to issues such as: a lack management skills and preparation for the position; failure of parents to 'let go'; little or no planning for the business; inadequate consideration and planning of the ownership; and specific needs of the family members.

>> Most common cause of conflict

The three most common causes of conflict within the family involved in a family business have been identified as:

- the problem of the 'insider and the outsider', which relates to a failure to share information and decision making with all of the relevant stakeholders;

- the 'disconnected shareholder', or a person/ family member who is not a part of the decision making hierarchy who undermines the authority of management by spreading stories amongst employees, suppliers and customers, without necessarily having regard to the truth or otherwise of the stories; and
- 'fighting over the spoils', or family members looking critically at what one stakeholder is receiving from the business and comparing it with what another receives.

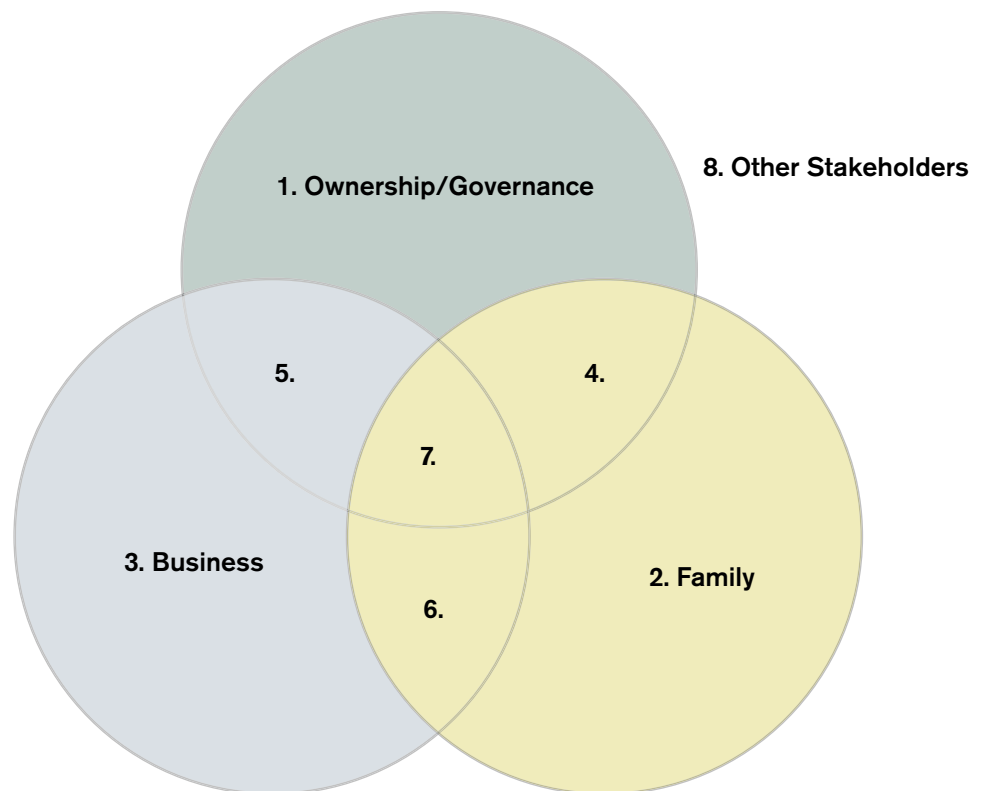
Very often, these issues do not surface until after the passing of a controller of the business and the children of the controller have the responsibility of owning and managing the business.

Potential conflicts between children will often be bypassed simply because of the controlling influence of the parents while they are alive.

>> Most critical areas for consideration

When you look at the areas that research has identified as being common reasons for business failure, there are generally three quite separate issues that need to be addressed which are represented in the diagram below. Those areas

include the family relationships, the ownership and governance issues of the family company and the status of the business.



In this diagram:

1. relates to people who are involved in the ownership of the business but who are not family members and not involved in the conduct of the business;
2. relates to the family members who have no ownership in the business and who do not work in the business;
3. people in this category work in the business, but they are not owners or family members. They might be managers, and other employees;
4. these people are family members who have an ownership, but are not employed by the business;
5. relates to people who have ownership and who work in the business but are not family members;
6. these are family members who work in the business but have no ownership rights in the business entity;
7. relates to family members who have ownership rights and also work in the business.
8. other stakeholders who are not family members, have no ownership rights and do not work in the business, but have an interest in the business as in customers, suppliers, financiers, etc

When people find themselves in different areas and in different combinations of these areas, they naturally see things from different perspectives and it is these differing perceptions that can lead to the conflicts within family businesses. Although the areas represented by each of the circles might be regarded as separate, you cannot make decisions affecting one of those areas without that decision impacting on each of the other areas.

>>The process for resolving family conflicts

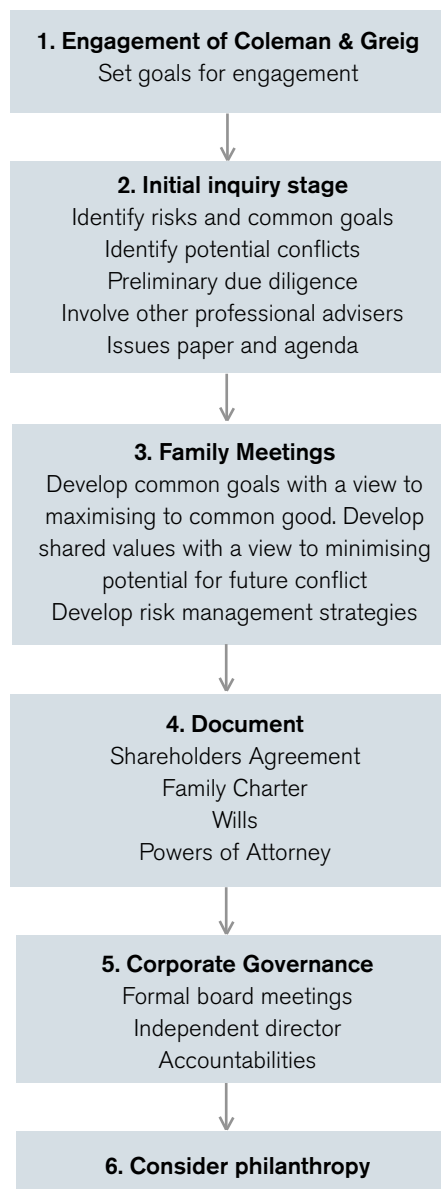
In any business planning exercise, it is necessary to have regard to the interests of all stakeholders. In a family business, the stakeholders often include a greater number of people. When the interests of all stakeholders have not been taken into consideration, there is an increased risk of conflict amongst those stakeholders and that conflict is often the major contributing factor in the failure of a business.

We see stronger family relationships and longer lasting business relationships when the decision to remain in business together is made by the children themselves, rather than being made for them by the terms of the parents' will. This agreement can be achieved by including the children in the decision making process about succession or by leaving them to make their own decisions about their individual futures at an appropriate time.

In some cases, where siblings are unable to agree, there is no alternative than for the parents to make that decision. In other cases, it may be important for parents to offer assistance to their children in the decision making process.

It is therefore important to have regard to each of the different areas both in the present and in the future. Consideration needs to be given to the conduct, management and ownership of the business during the retirement years of the parents and after they pass on. To ensure that the interests of all stakeholders are taken into consideration in the succession planning process, the steps set out in the flow chart that follows are commonly utilised.

>> Preparing for the transition



>>How can Coleman & Greig help you?

The team at Coleman & Greig is highly experienced in all aspects of family business succession planning, and has guided numerous businesses through the process.

We can assist you with:

- Facilitating the planning process to engage stakeholders
- Preliminary due diligence
- Identifying and managing risks to the business
- Business structuring
- Shareholder Agreements
- Contracts
- Preparing a Family Charter
- Drafting Wills and Powers of Attorney
- Corporate Governance advice
- Role of Board members and Directors



>>Interpreter Services

Coleman & Greig can provide interpreter services in a range of foreign languages including:

- Arabic
- Assyrian
- Croation
- Italian
- Samoan

>>Other Services

Coleman & Greig provides a wide range of services including:

Commercial Legal Services

- Corporate & Commercial
- Employment Law
- Occupational Health & Safety
- Franchising
- Litigation & Dispute Resolution
- Intellectual Property
- Trade Practices
- Building & Construction
- Commercial Securities
- Commercial Property
- Business Migration
- Succession Planning
- Notarial Services

Personal Legal Services

- Property and Conveyancing
- Wills and Estate Planning
- Family Law

Printed June 2009



For further information:

Level 9, The McNamara Centre, 100 George St, Parramatta NSW 2150
Phone: 02 9635 6422 Fax: 02 9689 3983 Email: info@colgreig.com.au
www.colemanandgreig.com.au

