

# Estate Planning Focus

Trusts & Estates Newsletter SPRING 2015



## It's a Family (Owned Business) Affair For the Love of Your Family, Plan Wisely for Your CEO's Successor

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You've put your time, energy and passion into building a successful business and it is well-established in the community, the region or maybe the world. One reason you keep

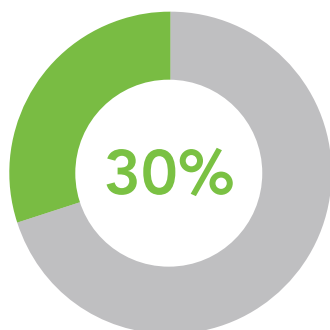
the business family-owned is that you hope to pass it on to future generations. It's a significant part of your legacy.

Unfortunately, nearly all family businesses fail within four generations, with a super-majority failing by the first leadership transition. In fact, the Family Business Institute reports that "only about 30 percent

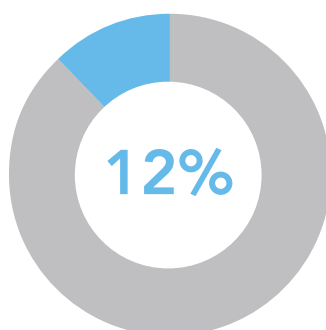
of family-owned businesses survive into the second generation, 12 percent are still viable into the third generation, and only about 3 percent of family businesses operate into the fourth generation and beyond."

Renowned business author John C. Maxwell said, "Everything rises and falls on leadership." There is no more important

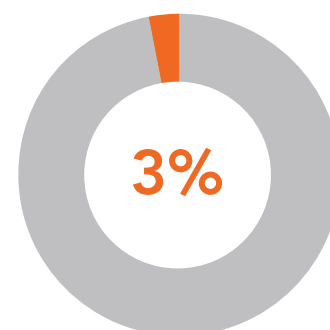
## ... Plan for Your Successor



30 percent of family-owned businesses survive into the second generation



12 percent of family-owned businesses are viable into the third generation



3 percent of family-owned businesses survive into the fourth generation and beyond

factor in the longevity of your business than the selection of its next CEO. And yet, most family businesses are getting it wrong. The significance of this cannot be overstated, and it is a global problem.

In a recent Harvard Business Review article, global consulting firm Egon Zehnder revealed its findings from a study of 50 of the world's most successful family-owned businesses. Egon Zehnder found that the best businesses brought "discipline to top-level succession." They also found that a lack of discipline in leadership succession leads to disaster. A study cited by Egon Zehnder found that over 200 family businesses lost, on average, 60 percent of their value within eight years after a CEO change.

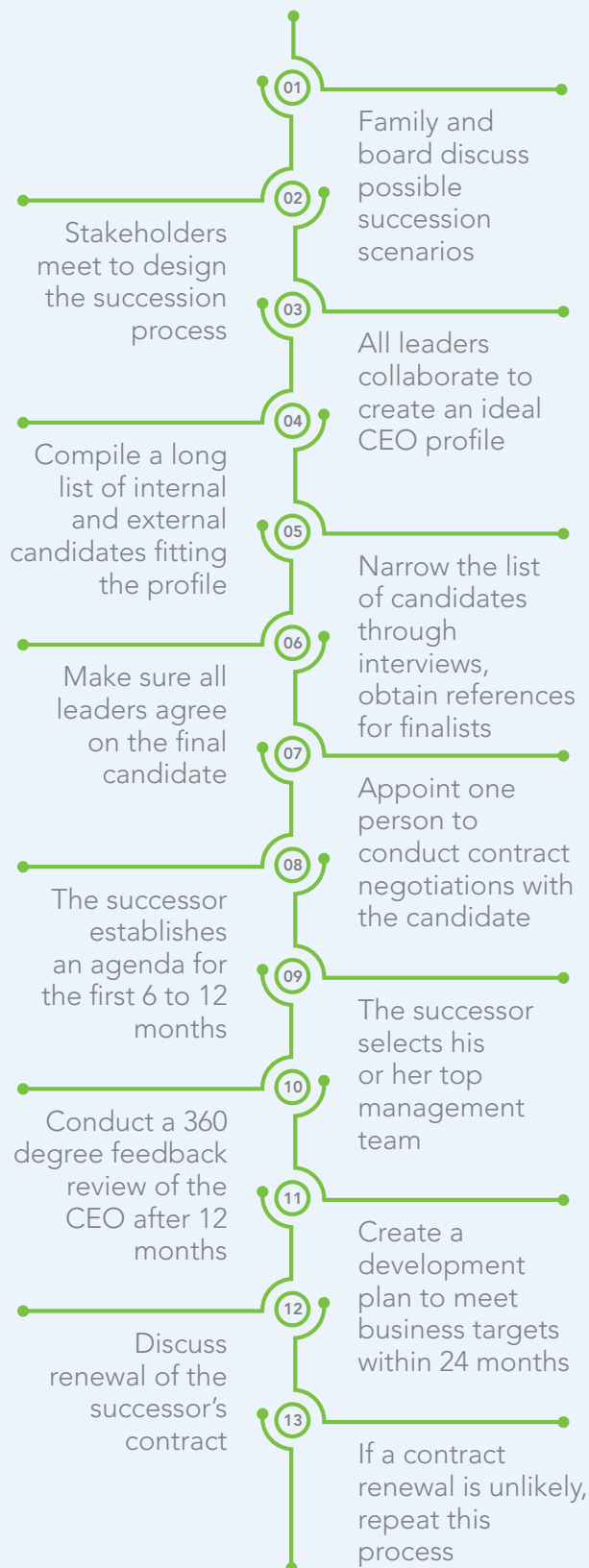
Egon Zehnder's study found that most family businesses fail to follow a "structured selection process" for new leaders. Instead, one leader "intuitively chose" the successor, and the boards merely signed off on that choice. Almost 30 percent of the businesses in the study considered only one candidate to take the helm. Family businesses are, therefore, failing to even consider some of the best talent available. Avoid the one-man selection committee.

The good news: firms that are deliberate and clear about their leadership selection processes energize their workforce and land the best external candidates. To paraphrase the *Harvard Business Review* article, the following steps constitute a robust CEO succession planning process:

- Family and board members discuss possible succession scenarios

- Stakeholders meet to design the succession process
- All leaders collaborate to create an ideal CEO profile
- Compile a long list of internal and external candidates fitting the profile
- Narrow the list of candidates through interviews, obtain references for finalists
- Make sure all leaders agree on the final candidate
- Appoint one person to conduct contract negotiations with the candidate
- The successor establishes an agenda for the first six to 12 months
- The successor selects his or her top management team
- Conduct a 360 degree feedback review of the CEO after 12 months
- Create a development plan to meet business targets within 24 months
- Discuss renewal of the successor's contract
- If a contract renewal is unlikely, repeat this process

## CEO Planning Process



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“Nearly all family businesses fail within four generations.”

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This CEO selection process is not impossible, but it requires focus and discipline.

Once you have a process in place, communicate the relevant details to your candidates, including a hiring timeline and the core competencies of your ideal candidate. An unclear selection process leaves candidates feeling unsure about your company. That will cost you an opportunity for the best talent. Moreover, it leads to disengagement and distrust among your internal candidates. If your business's emerging leaders see a haze around your leadership selection processes, they will lose motivation, and you might lose them to a more transparent or predictable competitor.

It's time to put a succession plan in place, and we can help. Several attorneys in Warner Norcross & Judd's Trusts and Estates Practice Group have vast experience assisting family businesses with proper succession planning. We produce the necessary documents, facilitate productive meetings and work to build consensus among diverse stakeholders. We stand ready to assist you in preserving and passing along your legacy of success. 

# Doctor's Bestselling Book Calls for a New Approach to End-of-Life Care

BY DANIEL W. BORST  
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My extended family draws names for our present exchange at Christmas. Last Christmas, I drew my dad's name. On the way to my parent's house on Christmas Eve, I stopped at a bookstore to buy my dad's gift. With a minivan full of kids eager to get to grandpa and grandma's house, I knew an extended search would end in trouble, so I picked the first book I had heard good things about – *Being Mortal*. Pleased to have finished my Christmas shopping in record time, I didn't give much thought to what this book was about.

Atul Gawande, the book's author, is a surgeon and also a writer for the *New Yorker*. In *Being Mortal*, Gawande explores – from a personal and medical perspective – the reality that we age, become frail and often lose our independence. If the goal is to live life well, and with a purpose, how do we best respond when our bodies become weak or when illness strikes?

Gawande argues that the treatment-at-all-costs model, the model that prevails in emergency rooms and

hospitals throughout this county, needs to be re-examined. The prevailing model too often results not in a better life, but in undue suffering, extended hospitalization and sometimes a shortened life. Yet we know, and Gawande acknowledges, these are knotty issues, because we do not want to make the mistake of shortening valued life when treatments may be successful.

It is encouraging that members of the medical field are engaging in this re-examination of the prevailing model and openly discussing what medical professionals want for themselves, their families and their patients. And we, as patients or potential patients, and families of patients and potential patients, need to examine and discuss these issues, too.

These discussions are happening with attorneys like me, in hospitals and in non-profit community organizations, such as Making Choices Michigan. Through these conversations, more people are formulating advanced care directives and signing patient advocate designations. Even more people should: according to a 2013 Pew Research Center Poll, only 35 percent of adults nationally have such documentation in place. It is important for every person age 18 or older to have this conversation and sign these documents.

Still, having the conversation with an attorney, hospital worker or volunteer and signing patient advocate designations is not enough. If your spouse, your children or trusted friends do not know your care

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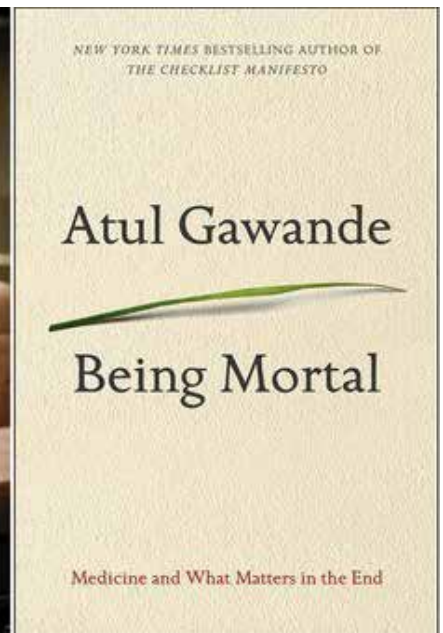
“Gawande argues that the treatment-at-all-costs model ... needs to be re-examined.”

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wishes, and if end-of-life decisions must be made, too often the treatment-at-all-costs system takes over, even if a patient advocate designation document is in place.

What can you do to prevent the treatment-at-all-costs approach to your end of life care? Here are some tips:


- Share copies of your advanced directive and patient advocate documents with your primary care doctor (although your primary care doctor is not likely to be the doctor who will treat you in the hospital or emergency room.)
- Upload your advanced directive *and patient advocate document to the Great Lakes Health Connect website (gl-hc.org)*, which is secure. This allows hospitals (and only hospitals) to review your documents. West Michigan emergency room doctors and nurses are now beginning to check this site when someone arrives at the emergency room, and we hope that they will do so more often in the future. This is important because E.R. doctors and nurses often do not have time to review your entire medical file before treatment decisions are made. Warner Norcross & Judd can assist in uploading your patient



advocate designation document onto this site if you would like.

- Finally, talk with your family, close friends and advocate about your wishes. Even with an advanced directive and patient advocate designation in your medical file and uploaded onto the Great Lakes Health Connect database site, what family members tell your health care providers is given great weight, regardless of what your documents say. You need to express your desires to those closest to you.

These discussions are often the hardest part, but I encourage you to bring up the topic. Or, when others bring the topic up, pay attention, give that person time and listen. If the topic is difficult to discuss or you don't know where to begin, I can recommend a good book on the issue.

I'll let you decide whether it is an appropriate holiday or birthday gift, but now that my parents and I have read *Being Mortal*, we will soon be discussing the book and its worthy topic. 

# Married Without Children: You Still Need an Estate Plan



BY KELLEN E. ELLIOTT  
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Many friends and peers who have married in recent years have asked, shortly after their weddings, whether an estate plan is truly necessary before having children or if they do not anticipate having children. My short answer – yes, absolutely!

Couples with children tend to be eager to finalize their estate plan – in the event of their premature death, they want to be certain that a guardian is named for minor children and that their assets are distributed to their children in a responsible, measured and tax-efficient manner. Couples without children often hesitate to complete an estate plan. I suspect that one cause for

this hesitation is a lack of urgency – without children to plan for, there appears to be less impetus to finish the estate planning process.

But there are compelling reasons for having an estate plan, despite not having children. Couples without children need to plan for a future that will not include adult children to provide assistance – physical, emotional, financial – as they age. One important task is determining who will handle your medical decision-making and financial affairs if you are disabled or otherwise incapacitated. Another important task is working together with your spouse

to decide what will happen to your property after the death of the surviving spouse. Let's consider each task in turn.

## PLANNING FOR INCAPACITATION

Your estate plan should include durable powers of attorney for financial matters and patient advocate designations for medical decision-making. These documents are critical should you become incapacitated. Without them, your family must ask the court to name a conservator and guardian to oversee your care and custody – a process that is expensive, public, and may result in the naming of caretakers that you would not have chosen for yourself.

Couples without children typically name their spouse to act as their agent (under durable power of attorney) and advocate (under patient advocate designation) in the event of incapacitation. A trickier question is

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who to name in those roles if your spouse is unable to serve. You may name the same person or different individuals to act as your successor agent and successor advocate, but those roles have different responsibilities:

- Your agent will manage your investments and pay your bills, so you should select someone who exercises sound financial judgment and demonstrates organizational skills and close attention to detail.
- Your patient advocate will make all decisions regarding your medical care if you are unable to do so, including whether to remove life support in end-of-life situations. You should carefully select an advocate who will respect and act on the guidance you described in your designation.

Possible candidates for successor agent and successor advocate include siblings, cousins, nieces and nephews, and friends. You may also consider naming a professional fiduciary, such as a trusted advisor or bank officer, as successor agent. Doing so, of course, would bring additional expense to overseeing your financial affairs but also a degree of experience.

## ULTIMATE DISTRIBUTION OF ASSETS

Your estate plan should also include wills, possibly a trust, and beneficiary designations for retirement plans and life insurance policies. These documents enable you to designate how, when, and to whom your assets will be distributed when one or both of you are gone.

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“55 percent of Americans die without a will or estate plan, according to the American Bar Association.”

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If you die with no will, the court system will essentially write one for you – generally, this would result in assets being distributed to your spouse, if surviving, and possibly to certain relatives. If you are the first to die, upon your surviving spouse’s death most of your combined assets would pass to your spouse’s family. This may cause you to unintentionally disinherit your family.

You should carefully craft your estate plan if you do not want to risk disinheriting your family, or if you would like to leave gifts to specific family members or friends. Perhaps the simplest way to do this is for both spouses to execute “sweetheart” wills, leaving everything to each other and detailing what happens when both spouses die. Or, you may create a joint revocable trust or separate living trusts – which have the added benefit of avoiding probate proceedings after your death to the extent you retitled assets in the trust during your lifetime.

Childless couples are more likely to give to charity upon death. These gifts may be made via a will or trust, but you should also consider naming charities as beneficiaries of your retirement plan. Unlike individual beneficiaries, charities will not pay income taxes on amounts received from retirement plans.

Contact any member of the Trusts & Estates Practice Group at Warner Norcross & Judd if you need an estate plan or suspect that your current plan is outdated. 

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