Beyond the Bottom Line
FRAMING THE CLIENTS’ TRUE LEGACY
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Engaging business clients in meaningful conversations about passing values on to the next generation can be a rewarding experience. The challenge is knowing how to help the client focus on the values that helped establish the family legacy.

The focus of estate planning has moved from developing the best tax strategy to focusing on asset protection, values promotion, and virtues-driven planning. As practitioners, we must equip ourselves with tools to gain the client’s confidence. This will allow us to create plans that work not only for the founding generation, but also for the successor generation.

The financial legacy is often the focus in estate planning for business owners. The question is usually how much our clients can leave their kids in a way that minimizes tax and administrative fees. This focus often ignores the overall business transition. Because the health of the family business is a key element of the overall family legacy, it is important to look beyond the short-term financial aspects of the transfer. Values are an integral piece of the business and the family legacy that is being transitioned.

Understanding the founder’s values is critical to the success of the plan.

This article is based upon the following three premises:

1. A family that focuses solely on the financial aspects of estate planning in the business context will be challenged to instill the family values in the next generation.

2. A family that is willing to engage in a critical conversation with its advisors and other stakeholders will have much greater success in passing precious values, virtues, and wealth.

3. The family business is grounded in values whether or not the client acknowledges or articulates them. They are critical to the transition, either because they need to be embraced or because they need to be dealt with carefully. This last premise is one that can be easily overlooked, but is critical to the analysis.

If we accept these three premises, the question becomes: How do we engage in the work to add this value for our clients?

If we have a deeper discussion with our clients about their values, what are some of those values and virtues that might come up? Honesty, respect, humility, risk, sacrifice, thrift, industry, responsibility, temperance, political leanings, compassion, internal drive, faith, integrity, loyalty, philanthropy, community involvement, commitment to family, commitment to education ... the list goes on.

Before we proceed, there is one other element that often interferes with this style of planning. Often, the client has agreed on a deal and just needs the attorney to write the documents. Since most estate planners are not litigators, we are often referred to as transactional attorneys. I would argue that there is a third category of lawyers that we should strive to be—relational attorneys. The key to values-based planning, whether it be within the business or the personal context is that we develop the relationship with the client.

If we are meeting with a new client, he or she is not likely going to walk in the door and talk about values. How do we transition that client from thinking about the transaction to thinking about the success of the next generation? Our first conversation must show our confidence that there is more to the transaction that we need to know. As we talk with our clients, active listening will allow us to frame follow-up questions that open the door to values-based conversations. The following questions might help us gain an understanding of the values underlying the business:

- Are the other family members involved in the business? If so, are the other family members’ best talents being utilized?
- Have the founding members used their social capital to further philanthropic goals?
- What leadership style does the founding owner have? Is it detailed and oriented toward success? Or does the founder let successors figure things out on their own? Collaborative or not? Inclusive or unilateral in decision-making? How supportive are the founders of staff?
- What is the approach to customer service?
- How do the founders perceive themselves in relation to their community? Is that important to them?
- Do their political or spiritual beliefs color their business practices?
• What really excites the founder about his or her business? What about the founder’s spouse?
• What do the books of the business tell you? Are they complete? Or is your client a serial entrepreneur?

The client may have never thought of these questions. From the client’s perspective, the values that made the business successful may be so natural and ingrained that they are simply the essence of the client’s make-up. Articulating them is challenging, but doing so becomes a cornerstone to helping the family’s transition.

Transitioning a family business is complex because it is rooted in the family’s value system—whatever that system may be. There is usually much to learn about the business and the values of the client, not to mention the values of the successor. Learning values and traits on the front end makes the engagement much more likely to succeed. Success is all the more satisfying when it includes legacies.

Values-based planning takes time. The advisor must cultivate the relationship so that the client understands the big picture and the long-term benefit. Once the client trusts the advisor, it is easier to engage the client in a conversation outlining a family mission statement (“what does your family want to accomplish?”), which leads to a conversation to establish the vision statement (“what is the goal of those accomplishments?”). The conversation may continue beyond the business context. There may be different family and business mission statements that help identify the family’s true legacy.

Once the data is gathered, the attorney must analyze the data. The attorney may need to meet with the business leadership. The attorney may need to develop a relationship with the operations manager or the finance manager. Understanding general staff and human resources issues may be key.

It is critical for the attorney to step back or dig in and analyze. Successful business clients have usually learned how to tell people what they want to hear. More than once, clients have espoused the values they think I want to hear. Becoming a relational attorney requires a real commitment to digging deeper than the surface.

Some have said that we should always start with the end in mind. As estate planning lawyers, we know that once we have identified a family mission statement and family vision statement (or even some simple design goals), and developed an outline for a successful business transition, we are ready to look at the long-term estate plan.

Let’s look at how some of the focus on values comes into play with some typical business planning clients.

**EXAMPLE #1**

The family farm client where only one of three children actively farms, but the history of the family is that the eldest child receives the farm as an inheritance. Right away, we know that a predecessor valued keeping the family farm intact. What are other practical ways to honor the family value and the current family dynamic? A mission statement would be highly beneficial in this situation—the value has survived prior generations and the current client wants that to continue for generations to come. Values here might include heritage and hard work or maybe education for the non-working siblings. “Fairness vs. equal” treatment of the children must be deeply discussed. These are questions that should be asked of the client.

The client might be interested in newer entity strategies to keep the farm intact for the future generations. We, as the advisors, need to consider who would manage this entity and what types of shareholder agreements might be put in place to protect the farm from subdivision.

If farming and heritage are the important value, the advisor might encourage the client to develop rituals, traditions or ceremonies to share the family pride and heritage with the younger generations, bringing them back to the farm periodically and providing a funding mechanism or hook to keep the family engaged. The client might engage in documenting family artifacts in a way that makes them meaningful tools to reinforce the family history. The client might engage in documenting family stories and legends in a way that makes them accessible to family members at a time when they are open to understanding them.

These are tools that really excite clients. And, they are opportunities that are not often explored by other advisors. The level of value that these tools can bring to a family often far outweighs accurately recording the plan.
EXAMPLE #2

A successful vacationland theme park where 4 of 5 children are involved in the business, each child managing a particular function of the business, but some of the functions are more critical and valuable to the company. For this family, fun must be a core value, right? We, as the advisors, need to figure that out. Since so many members of the family are involved, developing strategies for communication between them is critical, and a risk if not successful. If a value is to keep this family intact, there is much that the relational advisor can offer.

For this family, there is an opportunity to propose a corporate governance program to offer objectivity. Bringing children onto a Family Board of Directors and receiving objective guidance early and while the senior generation is still in leadership could help divert future leadership issues. Such a board might be a way to include the nonparticipating member of the family. Defining the values here may play a role in solving big decisions down the road. Teaching the family/Board to operate as a business with many decision makers and learning boundaries for each is simply imperative. And, since this business is one where other families come to play and bond, being involved in family type organizations in the community (if that is a value) could be a place for philanthropy or for a Family Foundation to thrive.

EXAMPLE #3

The business has experienced a 300% increase in value in 2 years and is being sold. The client wants to engage in tax-centric planning. The clients’ children are still in college. The client values philanthropy, but has no framework in which to discuss it. What other values might exist here? With the facts presented, the client likely values education and possibly hard work. If so, these first-generation entrepreneurs have worked very hard and often don’t want their children to experience affluenza. They want their children to be hard workers, too. In a younger family, owners know that their children may not be used to dealing with the money that may appear and they value protecting them from poor decisions.

In this situation, basic Wealth Docx* style estate planning is critical. Using GRATs, defective grantor trusts, and other such planning tools in desirable jurisdictions, which protect the beneficiaries from immature financial decisions, divorce, and creditor claims is critical. A discussion with the client about the client’s values and whether or not certain behaviors should be rewarded or encouraged may be included in the plan. Depending upon the sale price, charitable planning may be critical. Here, a Family Foundation might keep otherwise self-focused kids focused on the needs of their community and others. All of these should be based upon a family mission statement or a family vision statement that could change how the family will be remembered for generations.

CONCLUSION

It is critical that we spend time with the client to hear and understand their values, to remain objective, to bring their legacy together. We simply cannot assume the client’s values (which is essentially what attorneys have done for centuries).

In values-based estate and business succession planning, all stakeholders will benefit from the process. Clients often benefit from the process itself, by learning things about themselves and their family that they haven’t taken the time to learn. We may reveal personality traits or issues that would have otherwise unwound the succession plan.

Advisors benefit too! This is where estate planning gets fun. Estate planning is always interesting, but knowing that we may positively influence the transition of an entire generation of wealth makes this style of planning so rewarding. And then, there is the benefit of the additional planning and generational wealth that will require planning in the future. What family wouldn’t trust the advisor who created not only great documents but also a plan for true family legacy?

ABOUT THE AUTHOR

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