

Modern business succession planning: For the blended or complex family

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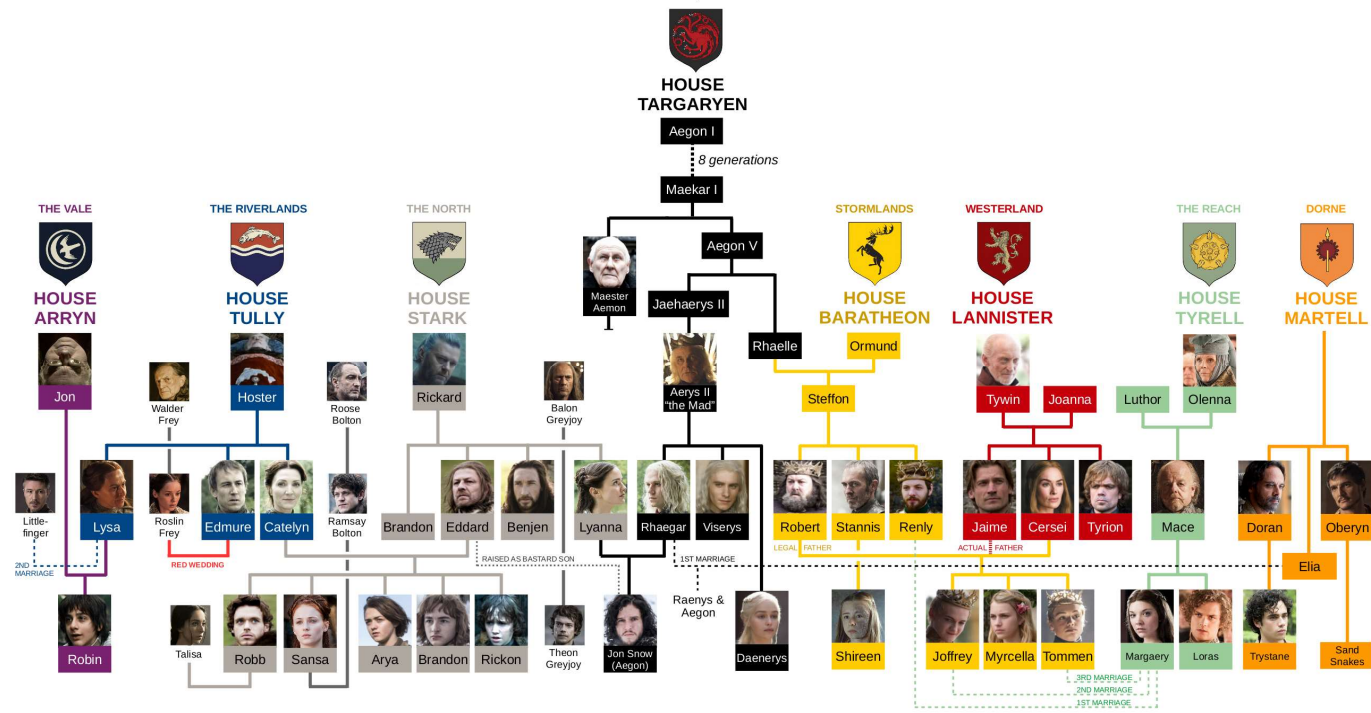
Introductory comments

- ◆ Detailed paper
- ◆ Role of the advisor
- ◆ Project manager or specialist

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Source: <https://www.rogerebert.com/reviews/great-movie-the-godfather-1972>



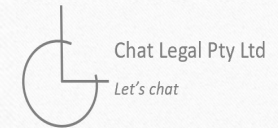
Game of Thrones Family Tree by Matt Baker - UsefulCharts.com. For educational purposes only - NOT FOR SALE.

Source: <https://www.rogerebert.com/reviews/great-movie-the-godfather-1972>



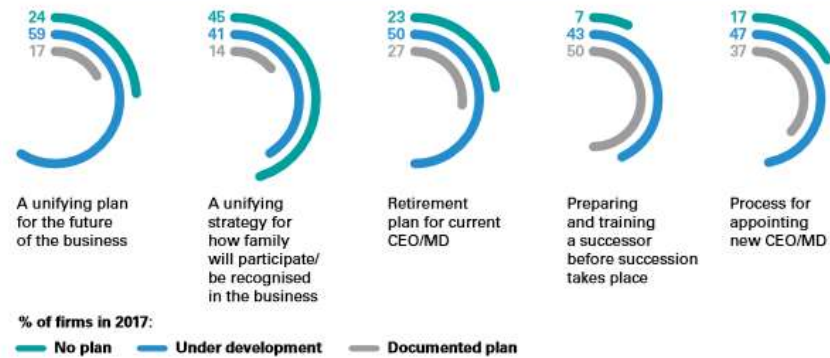
<https://www.youtube.com/watch?v=lpAMi2lwjo0>

Statistics

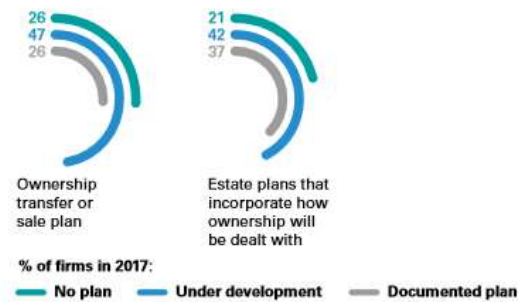


- ◆ 2018 KPMG Report in conjunction with Family Business Australia
- ◆ 37% with some form of plan v only around 20% in 2012
- ◆ Still lacking appropriately documented plan

Leadership succession planning of firms passing baton in < 5 years



Ownership succession planning of firms passing ownership to family in < 5 years



Source: 2018 KPMG Enterprise and Family Business Australia survey report

The 'family' factor

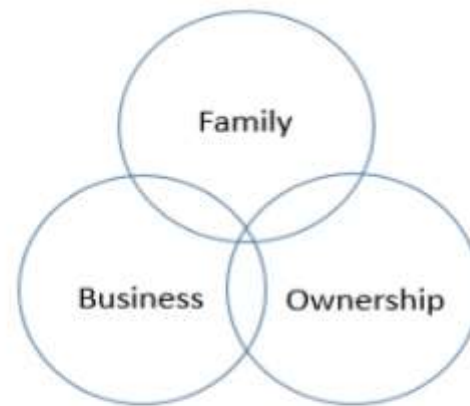
- ◆ Academic literature
- ◆ Concept of 'socioemotional wealth'

"non-financial aspects of the [business] that meet the family's affective needs, such as identity, the ability to exercise family influence, and the perpetuation of the family dynasty"

- ◆ Five factors:
 - ◆ Family control and influence
 - ◆ Identification of family members within the firm
 - ◆ Binding social ties
 - ◆ Emotional attachment
 - ◆ Renewal of family bonds to the firm through dynastic succession

<i>Family business</i>	<i>Non-family business</i>
Picking family members into leadership roles in the business regardless of experience as it maximises the identification of family members in the business and family control	Picking a person (whether family or not) with the most suitable qualifications into leadership roles, whether internally (from the business) or externally
Family member executives deciding to proceed with risk adverse strategies to maintain the family wealth	Directors deciding to proceed with strategies to maximise potential returns
Family businesses choosing to self-finance transactions to ensure control is retained within the family	Non-family businesses may seek financing via debt financing or equity participation from non-family members to undertake any large-scale transactions
Family businesses choosing to 'avoid taxes less aggressively than nonfamily' businesses out of fear of the negative outcomes associated with aggressive tax avoidance	Management seeking strategies that can maximise profits to the owners (to validate the appointment of such persons in management positions)
Family businesses 'sticking by' underperforming family member executives either due to fear of repercussions within the family dynamic or due to the fact that such executive is earning less than what a non-family member executive would have earned	Non-family member executives more easily criticized and dismissed if underperforming
Lack of written documents and evidence maintained due to the trusting nature of family members	Formal documents and processes implemented to provide a record of decision making

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***Three Systems Model of Family Business (Source: Tagiuri and Davis
1992)***

Fact-searching

- ◆ Understanding intentions in relation to ownership, management and family issues
 - ◆ the family's objectives in relation to the succession of the ownership and control in the business
 - ◆ the family's values and overriding principles that should be considered for future generations
 - ◆ whether there are any transition arrangements that can be implemented to ease key persons into the business

General application

- ◆ Hardwiring (formal legal documents)
- ◆ Flexibility (moral pieces of paper)
- ◆ Middle ground?

Ownership

- ◆ Current structure appropriate?
- ◆ Need to restructure?
 - ◆ (tax, stamp duty, gst and general commercial issues)
- ◆ Ensuring ownership passes to intended beneficiaries
 - ◆ Personal
 - ◆ Company
 - ◆ Trust
- ◆ Documentation
 - ◆ Will
 - ◆ Call options
 - ◆ Shareholders agreement
 - ◆ Deed of variations/trust succession documents for trustee/appointor/principal

Discretionary trust

- ◆ Discretionary nature makes underlying ownership difficult
- ◆ Heavily relies on trustee role
- ◆ Or appointor/principal role
- ◆ Certainty between family members v bringing the family together
- ◆ Recent case - Hoh v Ying Mui Pty Ltd [2019] VSCA 203
- ◆ Equity / trust law
- ◆ Usual structuring considerations (difficulty with retention of profits)

Unit trust

- ◆ Identifiable interests removes ownership doubt
- ◆ Rarer, as why wouldn't use 'family' trust
- ◆ Some issues still persist (retention of profits)
- ◆ QLD specific – stamp duty on unit transfers

Company

- ◆ Identifiable interest allows ownership certainty
- ◆ Retention of profits plus
- ◆ Corporations law – minority shareholder rights

Restructuring steps

- ◆ Current structure appropriate?
- ◆ Need to restructure?
 - ◆ (tax, stamp duty, gst and general commercial issues)
- ◆ CGT
 - ◆ Rollovers
 - ◆ SBCGT concessions
 - ◆ Tax consolidation
- ◆ Extending trust life – 80 years or South Australian trusts

PART 3-3--CAPITAL GAINS AND LOSSES: SPECIAL TOPICS

Division 122--Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned [company](#)

[122.1](#). What this Division is about

Subdivision 122-A--Disposal or creation of assets by an [individual](#) or [trustee](#) to a wholly-owned [company](#)

[122.5](#). What this Subdivision is about

[122.15](#). Disposal or creation of assets--wholly-owned [company](#)

[122.20](#). What you receive for the trigger event

[122.25](#). Other requirements to be satisfied

[122.35](#). What if the [company undertakes](#) to discharge a liability (disposal case)

[122.37](#). Rules for working out what a liability in respect of an asset is

[122.40](#). Disposal of a [CGT asset](#)

[122.45](#). Disposal of all the assets of a [business](#)

[122.50](#). All assets [acquired](#) on or after 20 September 1985

[122.55](#). All assets [acquired](#) before 20 September 1985

[122.60](#). Assets [acquired](#) before and after 20 September 1985

[122.65](#). Creation of asset

[122.70](#). Consequences for the [company](#) (disposal case)

[122.75](#). Consequences for the [company](#) (creation case)

Subdivision 122-B--Disposal or creation of assets by [partners](#) to a wholly-owned [company](#)

[122.120](#). What this Subdivision is about

[122.125](#). Disposal or creation of assets--wholly-owned [company](#)

[122.130](#). What the [partners](#) receive for the trigger event

[122.135](#). Other requirements to be satisfied

[122.140](#). What if the [company undertakes](#) to discharge a liability (disposal case)

[122.145](#). Rules for working out what a liability in respect of an [interest](#) in an asset is

[122.150](#). [Capital gain](#) or loss disregarded

[122.155](#). Disposal of post-CGT or pre-CGT [interests](#)

[122.160](#). Disposal of both post-CGT and pre-CGT [interests](#)

[122.170](#). [Capital gain](#) or loss disregarded

[122.175](#). Other consequences

[122.180](#). All [interests acquired](#) on or after 20 September 1985

[122.185](#). All [interests acquired](#) before 20 September 1985

[122.190](#). [Interests acquired](#) before and after 20 September 1985

[122.195](#). Creation of asset

[122.200](#). Consequences for the [company](#) (disposal case)

[122.205](#). Consequences for the [company](#) (creation case)

Bakery example

Example



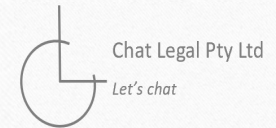
Passing ownership

- ◆ Ensuring ownership passes to intended beneficiaries
 - ◆ Personal
 - ◆ Company
 - ◆ Trust
- ◆ Documentation
 - ◆ Will
 - ◆ Call options
 - ◆ Shareholders agreement
 - ◆ Share transfers/unit transfers (during lifetime)
 - ◆ Deed of variations/trust succession documents for trustee/appointor/principal
- ◆ Context
 - ◆ Will challenges
 - ◆ Challenges under separate areas of law – equity and/or corporations law

Management

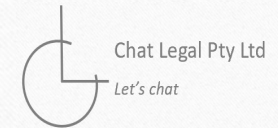
- ◆ Rules v framework
- ◆ Ensuring management passes and transitions seamlessly
 - ◆ Integrate now or later
 - ◆ Qualifications
 - ◆ Independent advisors v family members
 - ◆ How decisions are made
 - ◆ Vetoing or casting votes
- ◆ Documentation
 - ◆ Bespoke company constitutions
 - ◆ Ensuring company constitutions cannot be overridden (ensuring ancillary/control roles pass appropriately)

Family



- ◆ Managing expectations between family benefiting and family managing
- ◆ Need to put in place appropriate procedures and/or frameworks
- ◆ Family constitutions and councils
- ◆ Frequency of meetings
- ◆ Dispute resolution mechanisms

Final comments



- ◆ No one answer
- ◆ Every family is different
- ◆ Ask the right questions and ensure the right documents and frameworks are in place to ensure an as seamless transition as possible

Contact details



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