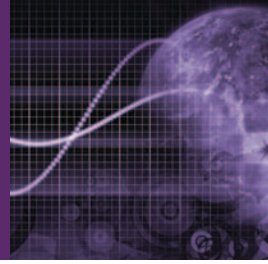

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Integrating Self-Management With Estate Planning

Family business succession enters the 21st century

Succession planning is often the most complicated piece of the estate-planning puzzle. While tax planning has specific statutory rules and court precedents that must be followed to achieve a successful outcome, there are no official rules in succession planning and, often, no perfect solutions. Additionally, every family and business is unique, and we require both psychological and business acumen to guide our clients properly, even though most estate planners are trained in neither. For our clients who are emotionally torn between ensuring that their businesses continue for as long as possible and still wanting their descendants to play a major role in the future, the "self-management" model, which has been featured in the *Harvard Business Review,*[1] among other publications, may offer an interesting solution. This business management structure eliminates the traditional hierarchical system of management in favor of empowered and self-directed teams of co-workers. Many successful companies already implement self-management, some in bits and pieces, and a few, in its entirety.

What Is It?

Self-management is an organizational philosophy expressed by individuals who freely and autonomously perform the traditional functions of management (planning, organizing, coordinating, staffing, directing and controlling) without mechanistic hierarchy and arbitrary and unilateral authority over others.

In a strictly self-managed enterprise, there are no bosses, no titles and no individual has unilateral power to fire anyone else. There's also greater cooperation among co-workers who are devoted, committed and fiercely loyal to each other and who are also each empowered to tackle the decisions they're best qualified to make.

Effective self-management relies on two foundational principles. First, co-workers shouldn't use coercion or force against each other to make decisions. Second, co-workers should respect and uphold the commitments they've made to each other. These very same principles also guide most of our current legal system and government. When people align their actions with these principles, the result is a more peaceful and harmonious society. Similarly, when individuals work in organizations that embrace these ideals, there are fewer barriers to productivity, collaboration and lofty performances.

Organizational self-management allows co-workers full autonomy to accomplish their respective missions, make the decisions they're best qualified to make, execute the tasks they're best able to perform and determine for themselves what education they require. Not every individual will thrive in a self-managed organization. Those who attempt to wield power or control tend not to succeed in this system because no one is required to follow them. Leadership roles, while still crucial, must be cultivated and earned. Likewise, those who need constant direction are unlikely to prosper in a self-managed enterprise because their colleagues won't have time to manage them. A self-managed ecosystem favors those who take initiative, communicate well and work effectively with others.

Self-Management History

The structure of traditional hierarchical management in the United States arose in response to the need for



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ways to control the sprawling industrial organizations of the mid-1800s. Workable systems of organizing companies with huge capital costs (railroads and steel mills) and coordinating the efforts of thousands of employees across a rapidly growing country required cadres of professional managers.[2] This was especially true given the vestigial communication systems of the time, because managers could cascade decisions down the hierarchical chain with reasonable confidence that their directives would be obeyed.[3]

This predominant U.S. management structure of the 19th century then became the default structure of the 20th century. Later industries (cars, airlines, telecommunications, energy, pharmaceuticals and others) depended on hierarchical structures to serve their customers. The familiar pyramid-shaped organization chart became the basic business operating system. It was inconceivable to imagine a world without bosses on top of the pyramid, making the big decisions. There was also a bright line distinguishing professional managers from mere workers.

Whether traditional functions of management also require certain co-workers to manage others is now open to serious debate, based on the successful companies that use self-management, in whole or in part.

The concept of hierarchical management was developed and communicated by famous industrial economic theorists like Frederick Winslow Taylor, who once famously declared to a congressional committee:

> I can say, without the slightest hesitation, that the science of handling pig-iron is so great that the man who is … physically able to handle pig-iron and is sufficiently phlegmatic and stupid to choose this for his occupation is rarely able to comprehend the science of handling pig-iron.[4]

Regarding his system of "scientific management," Taylor's appetite for management coercion was evident when he stated:

> It is only through enforced standardization of methods, enforced adaption of the best implements and working conditions, and enforced cooperation that this faster work can be assured. And the duty of enforcing the adaption of standards and enforcing this cooperation rests with management alone.[5]

Finally, more than a half a century later, in the 1980s, the total quality management movement, inspired and driven by W. Edwards Deming and others, began to acknowledge the enormous untapped abilities of non-managerial workers.[6] Numerous initiatives were launched to leverage this talent, including: more employee involvement; quality circles; empowerment programs; self-improvement plans; and knowledge sharing. While the literature and the initiatives at last seemed to acknowledge the importance of the non-managerial worker, there was still a tacit acceptance of the need for professional managers. After all, who would perform the work of management if not for the professional managers?

In 1990, Chris J. Rufer, a California entrepreneur, envisioned a new kind of company. He had already formed a tomato processing company in the early 1980s that was technically innovative and financially successful, yet relied on a traditional hierarchical management structure. With some innovative ideas in mind, he created The Morning Star Packing Company (Morning Star) in the Central Valley of California. His experience with his prior company convinced him to launch Morning Star with a new management philosophy—self-management. Rufer queried:

> If people know how to perform their jobs at a high level, why do they need managers? And, if people lead complex lives outside work (procuring mortgages, raising children, purchasing automobiles, engaging in community service), why can't they manage their own work lives as well?

While building his company's new factory in the spring of 1990, Rufer met with his initial band of

24 colleagues in a dusty construction trailer and distributed a document entitled "Colleague Principles"—his blueprint for organizational self-management. At this meeting, he shared his vision for a company with no hierarchy. There would only be work and people to perform the work. Each colleague would have a voice and the freedom to pursue the mission. The enterprise would be agile, dynamic and resilient. It would be unlike any other company of its size anywhere in the world. It would be the antithesis of Taylorism. As the first financial controller of Morning Star and part of the original band of 24, Doug Kirkpatrick, one of the co-authors of this article, was fortuitously present for that first self-management discussion.

After a few hours of discussion and debate, the group agreed to adopt self-management as Morning Star's governing mission. From that humble beginning, Morning Star has grown to become the world's largest tomato processor, operating the three largest factories in the industry. Its success, in large measure, is due to its self-management structure. Other successful companies like Semco S.A., W.L. Gore, Whole Foods and the Masco Corporation also use a comprehensive self-management system, while many other companies, such as Google, General Electric, Proctor & Gamble, Honeywell, Xerox, Volvo and Federal Express, implement self-management in part.[7]

The Future

The traditional functions of management include planning, organizing, controlling, leading, directing, staffing, selecting, coordinating and monitoring. Those functions will continue to be required at the company level, even in the self-managed model. However, whether those functions also require certain co-workers to manage others is now open to serious debate.

Margaret Wheatley, in her book *Leadership and the New Science,* writes:

> In a quantum world, everything depends on context, on the unique relationships available in the moment.[8]
>
> Since relationships are different from place to place and moment to moment, why would we expect that solutions developed in one context would work the same in another?[9]

Her observation is remarkably prescient given the evolution of management theory and practice. Approaches that once worked well in an era of heavy industrialization and slow communication are unsuited to the demands of today's world of advanced and rapidly evolving quantum technology and the required instant communication and action. New management paradigms are required, and self-management is a prime candidate for a successful and innovative business model.

Self-management became a hot topic of discussion among global business leaders when the December 2011 issue of the *Harvard Business Review* featured an article by Gary Hamel entitled, "First, Let's Fire All the Managers."[10] The article was an overview of self-management as introduced by Chris Rufer and implemented at Morning Star. In fact, one of author Avi Kestenbaum's estate-planning clients brought this article to his attention and asked whether this concept might work for the client's company.

Some have suggested that self-management is a nice philosophy, but it would never work in the (fill in the blank) industry, with (fill in the blank) number of employees or with (fill in the blank) sales volume. We respectfully disagree. Self-management doesn't depend on industry, number of employees, sales volume or other variables. It depends on core principles. Management is still management, whether by self or others. While there may be challenges, there are no discernable inherent barriers to implementing and scaling self-management. For leaders interested in creating the robust, resilient and dynamic enterprises of the future, the self-management model should receive strong consideration.

Family Business Succession Planning

While 80 percent to 90 percent of all businesses in the United States are family-owned, only 30 percent of these businesses survive to the second generation, 12 percent survive to the third generation and just 3 percent survive to the fourth generation.[11] Experts estimate that 85 percent of the problems faced by family businesses center around the issue of succession.[12] Family business succession requires careful planning for the transfer of management and ownership to a new generation in a manner designed to meet both the financial and emotional needs of the current owner, his family and key employees, all while maintaining the business as a viable and ongoing entity.[13]

The inherent discrepancies and contradictions between business and family values add to the challenges of family business succession planning.

Businesses are logical and succeed, in large part, based on their ability to adapt to changing times, yet families are emotional, inherently resistant to change and revere tradition and heritage.[14] Businesses reward employees for performance, competence and achievements, whereas families accept family members unconditionally and strive to treat everyone equally.[15] The family business owner, in his dual roles as business owner and parent, may feel that he's faced with the proverbial choice of deciding "between a rock and a hard place" when weighing what's best for his business and employees versus what's best for his family members.

While clearly not the panacea in every family business succession planning scenario, self-management can be used to ensure that the family business flourishes after the business owner is no longer involved, yet the family members can still play a leadership role, albeit one that's earned.

Family business succession planning is particularly difficult because of the emotional and psychological complexity of family dynamics, most notably the relationships among siblings. Sibling rivalry and jealousy are heightened when siblings work within the family business, especially if one sibling is reporting to another or if one sibling is chosen for a leadership position over another. Because the typical parent inherently wants to treat his children equally, he may agonize over who will lead the family business in his absence and, therefore, put off making these succession decisions all together, which only results in greater problems and discord down the road.

Additionally, siblings who work in the family business may resent those siblings who don't. Similarly, those siblings who aren't working in the family business can feel left out and that the siblings who work in the family business are being overly rewarded.[16] The "insider" siblings may want to keep the cash in the business and only provide compensation to those who earn or deserve it, while the "outsider" siblings want distributions of cash equally or closer in range, regardless of whether the siblings work in the family business.[17] Throw into the mix the spouses of the siblings on both sides, who may complain and influence their husbands and wives, and this creates even more ill will, jealousy and resentment. While some family business succession planning uses life insurance as a source to provide financial equality among the family members, which is helpful, true equalization is still impossible. Before developing a succession plan, the business owner must clarify his primary concerns and goals. Is he more focused on his family and not upsetting specific children? Or is it more important that his business remain viable for as long as possible? Furthermore, often the business owner will want to reward key and long-term loyal employees and to protect their security and positions as well, which could alienate his children. Family business succession planning is particularly difficult when the business is a family heirloom or legacy and there's even more emotion and sensitivity involved.

The Solution

While not a panacea for every family business succession planning scenario, self-management can be used to ensure that the family business flourishes after the business owner is no longer involved, yet the family members can still play a leadership role, albeit one that's earned. The company, which has empowered its workers, can operate with less direction and control by its owners and management. Teams will be participating in traditional management functions with the consent, eagerness and willingness of their co-workers and with less interference by traditional managers and owners. Leadership roles will be earned and not given or acquired by coercion.

Furthermore, the board of directors will still oversee the company itself, and family members can have a place on this board. In a more complex structure, there might be two boards, the family advisory board and the more traditional company board. The company board supervises the normal business decisions and the company's overall direction, and family members who've earned it may sit on this board and participate in these decisions. The family advisory board's membership, which is still acquired by birth, is informed of the company's board's decisions and, perhaps, still has a vote on major decisions and might also be involved with the company's charitable and social endeavors. Family members who are young can also sit on the family board and be educated about the company.

In terms of family members serving as employees and receiving salaries (as opposed to ownership distributions and dividends, which they may still receive depending on how the ownership of the company is structured and how distributions are made, such as with the use of family trusts with specific distribution provisions and for trustees to be involved), in a pure self-management structure, these positions should probably be earned like all other co-workers, though of course, family members might be afforded every opportunity and consideration to work in the company. In the self-management system, their leadership skills will be honed over time and earned because they will have to receive the blessings and commitments of their co-workers. They will also learn from the ground up.

Thus, by integrating self-management with estate planning, the company will be led by the right people to ensure its long-term success, but the family will still be involved. Those family members who deserve a major role will have one. Those family members who haven't earned the respect of their colleagues will have lesser roles, but may still sit on the family advisory board (and could still receive company distributions depending on the ownership structure and through the use of trusts with specific provisions regarding distributions). However, it's critical that this system be put into place well before the business owner starts winding down, as it will take time to restructure an existing company and because the longer the structure is in place, the more likely the business and family will accept its guidelines. With a new company, it's easier to implement this system from the start.

It's Time for a Change

While creative tax planning grabs most of the headlines in the estate-planning community and is crucial for family businesses, even with top tax experts involved, most businesses will fail to survive to second and third generations, which proves the success and failures of businesses are only partially reliant on sound tax planning. If the family business owner and his advisors truly want both the business to succeed and the family to remain as harmonious as possible, more emphasis needs to be placed on family business succession planning. Often, succession planning is ignored in the estate-planning process, because both the client and the planner don't know how to properly deal with it and because there are too many sensitive issues involved. While, this will always be the case, planners should place more emphasis on educating themselves and their clients regarding different types of business structures to assist with succession planning, particularly self-management.

Endnotes

1. *See generally* Gary Hamel, "First, Let's Fire All the Managers," *Harvard Business Review* (December 2011) at p. 48.
2. *See* Alfred D. Chandler, Jr., "The Railroads: Pioneers in Modern Corporate Management," 39 *Bus. Hist. Rev.* 16 (1965). *See also* Leslie W. Rue and Lloyd L. Byars, *Management: Theory and Application* (1977) at p. 22.
3. Chandler, *supra* note 2, at pp. 22-23.
4. David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism 1865-1925* (1987) at p. 251.
5. *Ibid.* at p. 229.
6. *See* W. Edwards Deming, *Out of the Crisis* (2000) at pp. 23-24.
7. *See* Peter A. Maresco and Christopher C. York, "Ricardo Semler: Creating Organizational Change Through Employee Empowered Leadership," *www.newunionism.net/library/case%20studies/SEMCO%20-%20Employee-Powered%20Leadership%20-%20Brazil%20-%202005.pdf*. *See also* Alyson Huntington-Jones, "A Company Run by Self-Managed Teams," Management Innovation Exchange, *www.managementexchange.com/story/new-story-10-fri-2010;* Gary Hamel, "What Google, Whole Foods Do Best," CNN Money.com, *http://money.cnn.com/2007/09/26/news/companies/management_hamel.fortune/index.htm;* Polly LaBarre, "When Nobody (and Everybody) is the Boss," CNN Money.com, *http://management.fortune.cnn.com/2012/03/05/when-nobody-and-everybody-is-the-boss/*; Creationstep Inc., "Work Democracy and Self Managing Teams," *http://creationstep.com/wp-content/uploads/selfmanagement1.pdf.*
8. *See* Margaret J. Wheatley, *Leadership and the New Science: Discovering Order in a Chaotic World* (1999) at p. 173.
9. *Ibid.*
10. *See* Hamel, *supra* note 1.
11. *See* Kay B. Abramowitz, *Enhancing Trust and Communication in Family Business Succession Planning* (September 2011) (citing the estimate by Joseph Astrachan, editor of *Family Business Review*).
12. *See* Bernard Kliska, "Planning for Business Succession," Chicago Bar Association, April 16, 1996, at p. 1.
13. *See* Louis A. Mezzullo, "Business Succession Planning," ST022 ALI-ABA 1131 1133 (2011). *See also* Edward F. Koren, "Non-Tax Aspects of Family Business Succession Planning," *Est. Tax & Pers. Fin. Plan. Update* (March 2006).
14. *See* Gerald Le Van, "Keeping the Family in the Business," *Prob. & Prop.* (November/December 1987).
15. *Ibid.*
16. *See* Koren, *supra* note 13.
17. *Ibid.*