



# Modern business succession planning: For the blended or complex family

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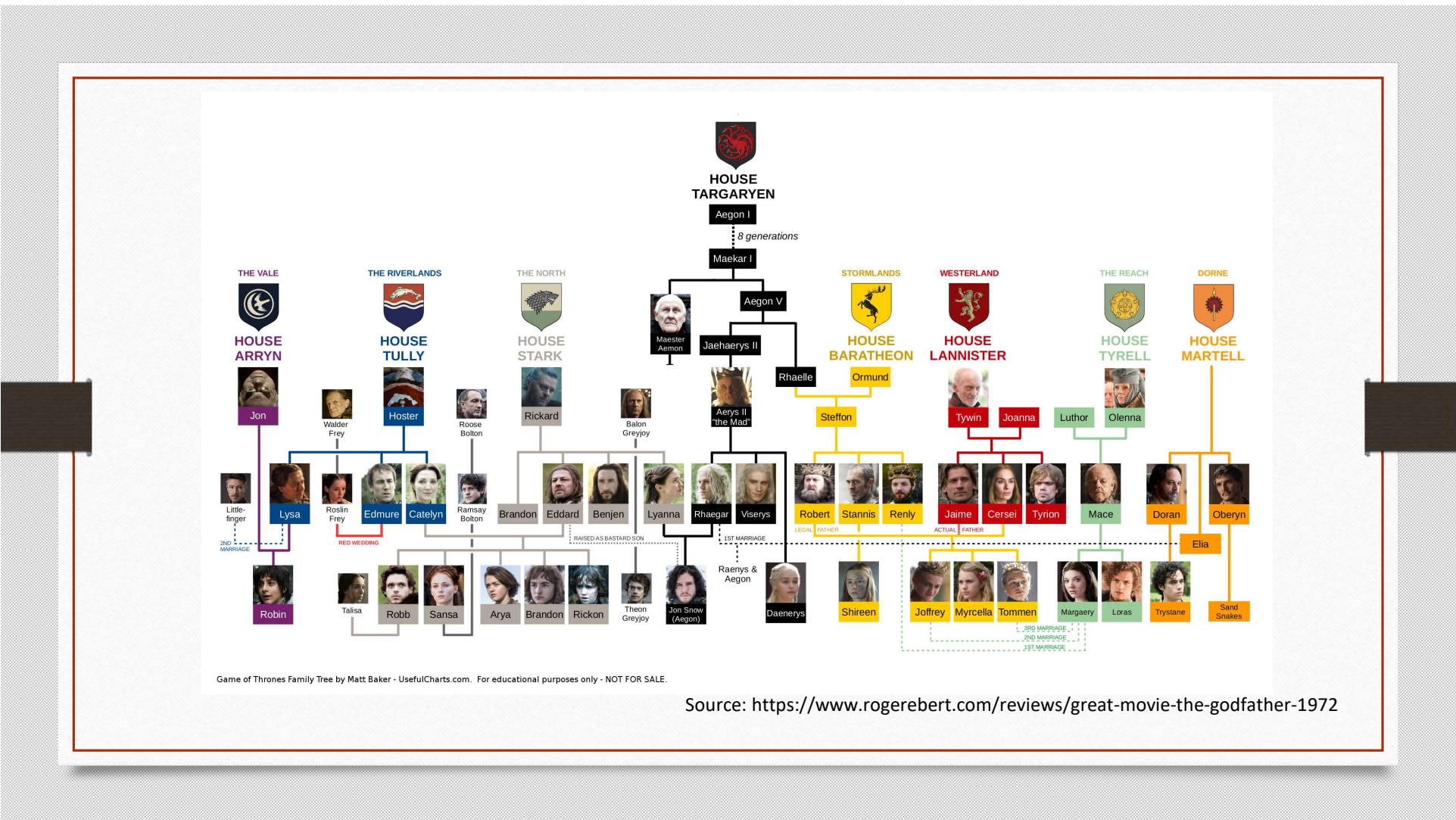
# Introductory comments

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





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





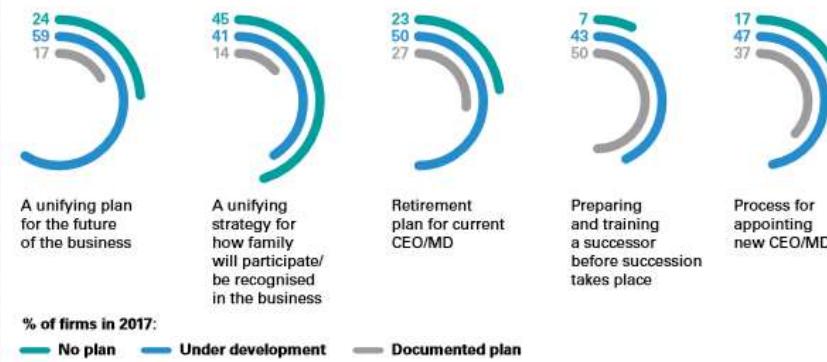
<https://www.youtube.com/watch?v=lpAMi2lwjo0>

# Statistics

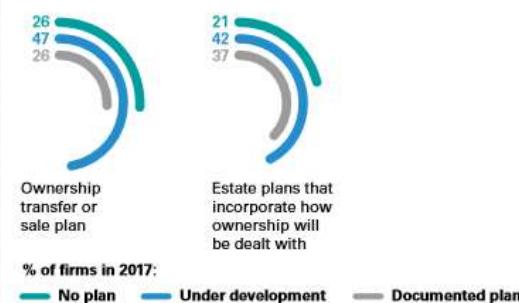
- ❖ 2018 KPMG Report in conjunction with Family Business Australia
- ❖ 37% with some form of plan v only around 20% in 2012
- ❖ Still lacking appropriately documented plan



### 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

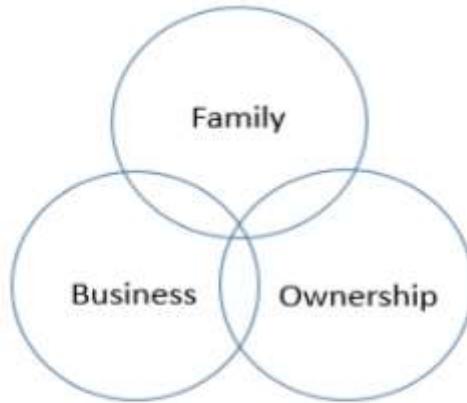


- ❖ Academic literature
- ❖ Concept of ‘socioemotional wealth’

*“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

<b><i>Family business</i></b>	<b><i>Non-family business</i></b>
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



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

# Fact-searching



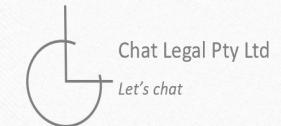
- ❖ Understanding intentions in relation to ownership, management and family issues
  - ◆ the family's objectives in relation to the succession of the ownership and control in the business
  - ◆ the family's values and overriding principles that should be considered for future generations
  - ◆ whether 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

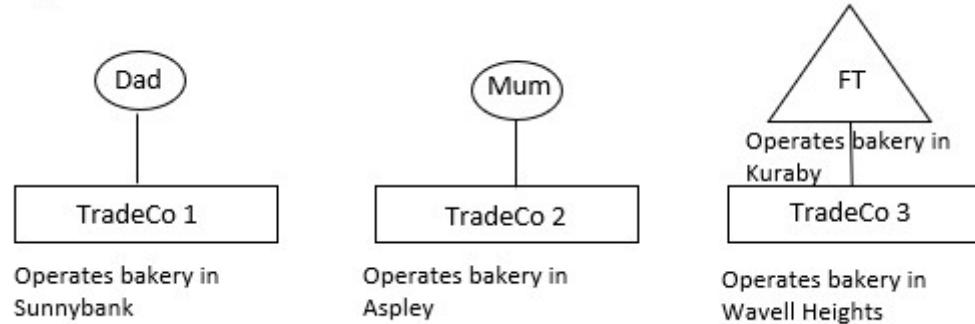
122.200. Consequences for the company (disposal case)

122.205. Consequences for the company (creation case)

# Bakery example



## *Example*

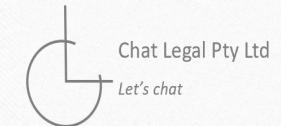


# Passing ownership



- ❖ 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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