

2016

Passing on Your Small Business

Succession Planning for the Sole Proprietor



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Acknowledgments

About Texas C-BAR: Texas Community Building with Attorney Resources is a project of **Texas RioGrande Legal Aid**. **Texas C-BAR** provides free legal counsel, legal representation, pro bono referrals, community education, and legal resources to income-eligible self-employed persons and microentrepreneurs in Texas. Texas RioGrande Legal Aid provides free legal services and legal information to low-income Texans.

This business succession planning guide is designed with the sole proprietor in mind. Succession planning and transfer of ownership of partnerships, limited liability corporations, and other registered entities have different rules and tax implications that are beyond the scope of this guide. This publication contains only basic, general information and is not intended as a substitute for the advice of an attorney.

As always, we welcome your suggestions and comments for its improvement.

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Contents

- Passing on Your Small Business 1
 - Why do I need a succession plan?*..... 1
- Practical Considerations 2
 - Is my business a going concern?*..... 2
 - How do I make a succession plan?* 2
 - What is my business worth?* 3
 - Business Valuation: Business Comparisons 3
 - Business Valuation: Methods 3
 - Business Valuation: Tangible Assets 4
 - Business Valuation: Intangible Assets..... 4
 - Business Valuation: Debts and Liabilities 6
 - How much of the business do I actually own?*..... 7
 - Texas Marital Property 7
- Keeping the Business in the Family..... 8
 - Succession Time Line..... 9
 - Equal vs. Fair 9
 - Ownership Succession vs. Management Succession 9
 - Will I have enough to retire?*..... 9
 - What happens to my business when I die?*..... 10
 - Estate Planning and Probate 10
 - Dying with a will 10
 - Dying Intestate (without a will) 11
- Succession Planning Tools* 12
 - Non-probate Assets..... 12
 - Life Insurance 12
 - Gift Tax Exclusion..... 13
 - Agreements between Spouses..... 13
 - Power of Attorney 14
 - Advance Directives..... 14
 - Transfer on Death Deed (real property only) 14
 - Letter of Instruction..... 14
- Selling or Transferring Your Business 15
 - Types of Business Sales and Transfers*..... 15
 - Outright Sale 15

Installment or Gradual Sale.....	15
Combination Gift and Sale.....	16
Lease/Sale.....	16
Transfer or Sale to Spouse	16
Liquidation.....	16
<i>Preparing to Sell.....</i>	17
Business Documents.....	17
Confidentiality Agreement.....	17
Adjusting Financial Statements.....	17
Disclosures and Disclaimers.....	18
Sales Proposal.....	18
Know Your Buyer.....	18
The Sales Agreement	19
Employees.....	19
<i>Wrapping up the Details.....</i>	20
Business Name.....	20
Sales Tax Permit	20
Other Permits and Licenses.....	21
Title Transfers.....	21
Commercial Lease.....	21
Bank Accounts, Vendors, Suppliers, Creditors.....	21
Insurance Carriers	22
Customers	22
EIN with the IRS.....	22
Maintaining Records.....	22
Conclusion	22
Forms	23
<i>Agreement for Sale of Business – Sole Proprietor</i>	24
<i>Promissory Note – Sale of Business.....</i>	27
<i>Bill of Sale.....</i>	28

Passing on Your Small Business

Succession Planning for the Sole Proprietor

This succession planning guide is written with the sole proprietor in mind. A sole proprietorship is the simplest and most common form of business. Here are some features of this type of business structure:

From Fortune 100 companies to microenterprises, **succession planning** is an established part of good business practices.

- ◆ A sole proprietorship, by definition, can never have more than one owner.
- ◆ A sole proprietorship is unincorporated; that is, it is not required to file as a business entity with the Texas Secretary of State.
- ◆ Business assets are treated the same as the owner's personal property.
- ◆ Business profits and losses are reported on [IRS Schedule C](#) of the owner's individual income tax return.

Succession planning for "filing entities" – businesses with a Certificate of Formation issued by the Texas Secretary of State – have different succession planning needs and tax consequences. Succession planning for LLCs, SMLLCs, LLPs, and Corporations are beyond the scope of this guide.

Why do I need a succession plan?

It takes a lot of planning and hard work to build a small business. If you're an owner, you've probably put a lot of thought into how to market your product or service, your competition and your balance sheet. But have you thought about what will happen to your business when you are no longer running it?

Maybe your plan is to pass the business on to your family, assuming that they have the desire and know-how to manage it without you. Or maybe your thought is sell it, assuming that you have a willing buyer when you want to sell. More often than not, however, it's the *unplanned* events - financial hardship, disability or sudden death – that can ruin the business you've worked so hard to create.

Statistically, 70% of family-owned businesses *fail or are sold* before the second generation has a chance to take over. (Source: [Family Business Institute](#)). The survival rate is even lower for sole proprietors. Lack of succession planning is often the reason.

A *succession plan* is like a road map for the survival of your business into the future. It sets forth what you want to happen to your business after a particular event. It could be planned, like your retirement, or unplanned – sudden death or incapacity, or an economic downturn. Without a

plan, family conflicts about management and ownership could end in business failure. Your business could deteriorate while your assets are tied up in probate court. A long- drawn out transition in ownership could result in a loss of customers or clients. A succession plan gives you a say in the future of your business instead of leaving it up to chance. It also gives you peace of mind.

Practical Considerations

Is my business a going concern?

In a sole proprietorship, the life of the business is often limited to the life of the owner. When the owner retires or dies, even the most successful sole proprietorship can fail. Before making a plan, take a hard look at your balance sheet. A business that is a *going concern* is one that can continue to operate long enough to carry out its commitments, obligations, and objectives.

If your business is struggling financially or carries a lot of debt, passing it on to your family or selling it might not be a realistic option. You may want to focus on liquidating some of your business assets to pay down business debts instead. If the success of your business depends solely upon your unique skills, think about whether you can train a successor to do exactly what you do, and whether your clients or customers are likely to stick around when you're not part of the business.

A business is more than just a collection of assets; it's a source of income. If your business is doing reasonably well and is likely to continue to do so, it's time to start making a succession plan.

How do I make a succession plan?

There is no formal "one size fits all" succession plan and there are no legal requirements. What goes into your plan depends upon your time line for retirement, whether you want to sell your business or keep it in the family, if you have trained your successor, how much debt you carry and other factors. Think about it, make an outline, and fill it in or change it as your business and personal circumstances change.

As a sole proprietor, your business assets are treated as your personal property for both tax and estate planning purposes, so a will is a key part of your succession plan. It might include a schedule to sell or give away your business in installments, allowing you to continue to run the business and receive some income while reducing your estate taxes when you die. Your plan may include a time line training your management successor to coincide with your target retirement date. It could also include a checklist what you need to accomplish (for example, a business appraisal, or to pay down debt) before finding a buyer for your business. If you want your family to inherit the business, your plan might start with holding a series of family meetings to discuss questions about future management and ownership.

The most important step in making a succession plan is getting started.

What is my business worth?

A good place to start is to find out what your business is worth. You know what it's worth to you: your livelihood, the result of your hard work, a source of pride for you and your family. But what is your business worth to a buyer? If your business doesn't have value to a buyer, you can't sell it. If you can't sell it, your business is more like a job – it produces income for you, but has no value as a business to someone else. If this applies to you, selling your business to fund your retirement might be unrealistic.

If your business is a going concern, it is worth more than just an income stream. Even if you don't intend to sell, knowing the value of your business can help you make important decisions about your business now and into the future.

To make business valuation, you'll need:

- ◆ Financial statements - present, past (minimum 2 years; ideally enough to show an upward trend in business), and the forecast for future.
- ◆ Fair market value - of real estate, equipment, inventory and other assets that would be transferred in a sale.
- ◆ Value of intangible assets and goodwill- employees, brand reputation, type of customers, length of relationships.

Business Valuation: Business Comparisons

To find out what your car is worth, you'd probably start by researching what cars of similar make and model are selling for in your area. You'd look at classified ads, Craigslist and online auto trader and sales sites.

You can research the value of your business in much the same way. In addition to Craigslist and eBay, several websites deal in small business sales. Compare your business to similar businesses offered for sale. This will give you some idea of what your business might sell for in the open market. You'll need more specific information to come up with the value of your own business.

Small Businesses for Sale:

Research what businesses similar to yours are selling for on sites such as:

BusinessMart.com; BusinessBroker.net;
BizBuySell.com;
vrBusinessBrokers.com

Business Valuation: Methods

There are several methods of business appraisals, used alone or in combination:

- ◆ Assets: book value, fair market value and liquidation value of each asset.

- ◆ Current earnings: gross income multipliers, financial ratios, ability to pay debt and cash flow;
- ◆ Market and market share: industry comparisons for similar sales; and
- ◆ Future earnings: discounted future cash flow or earnings.

Business Valuation: Tangible Assets

As a sole proprietor, much of the value of your business is in your business assets. Business equipment, tools and inventory have value, but so does your name, trademark, client list, and reputation. In general, you can sell or transfer your business assets as you would your personal property.

Tangible assets are physical assets, such as real property, equipment, fixtures and furniture. Most tangible assets are worth *fair market value*, which is often defined as ‘the price at which the property would change hands between a willing buyer and a willing seller, neither being under any pressure to buy or to sell and both having reasonable knowledge of relevant facts.’ Fair market value is not the purchase or retail price. It can be more or less than you originally paid for the asset. Keep in mind that almost all physical assets depreciate over time and may have a low fair market value (for example, vehicles). Real estate often is the exception.

Prepare an inventory - Whenever available, include photographs, serial numbers, and a brief description of the condition of each asset. Then decide on the fair market value (FMV) of each asset. A good way to determine the FMV of an asset is by looking at trade publications, Craigslist, eBay and other websites. You can also check the source where you purchased the asset to begin with.

Fair Market Value

The price at which the property would change hands between a willing buyer and a willing seller, neither being under any pressure to buy or to sell and both having reasonable knowledge of relevant facts.

Fair market value is not the same as liquidation value. *Liquidation value* is what the property is worth to a buyer when the seller is in a hurry to sell. Liquidation value is often used when selling business assets as part of bankruptcy liquidation, or when assets must be sold to pay debts of a person’s estate after death. The liquidation value is usually around 20% less than the fair market value.

Assets under a financing agreement - You will also need to identify which assets are *under a financing agreement* (that is, you are making payments towards the purchase price). You cannot sell or transfer an asset that you are still paying without permission from the lender. Otherwise, you have to pay off the balance owed before you can sell the asset. For these items, locate the financing agreement. On your inventory, list the lender, monthly payment, and the outstanding balance.

Business Valuation: Intangible Assets

An intangible asset is one that you may not be able to feel, see or touch but still has value as a business asset. It can be difficult to decide the value of intangible assets to a willing buyer because there is no ready comparison with similar assets. The following are some of the more common intangible business assets:

- ◆ Lease/location
 - ◆ Business name
 - ◆ Unique services
 - ◆ Personal/professional goodwill
 - ◆ Business/enterprise goodwill
 - ◆ Digital assets
 - ◆ Intellectual property:
 - Trademarks
 - Patents
 - Formulas
-
- ◆ *Lease/Location-* Depending on the business, the lease can be an important asset, especially if the business is in an established location. Read your lease and consult with your landlord beforehand to determine if you can sublet, or if the buyer can assume your existing lease. If your landlord is unwilling to allow either, you need to reconsider whether your business is as valuable if it has to move.
 - ◆ *Business Name* – If the value of your business is in the name of the business regardless of who owns it, the business name can be a valuable asset, especially when the business has strong name recognition and a good reputation. If the name is registered as a trademark, it may be even more valuable.
 - ◆ *Unique Product or Service* – If you provide a product or service for which there is not much competition, your business might be worth more or less depending on the business trends and potential future competition.
 - ◆ *Personal or Professional Goodwill* – This is the goodwill that is tied to you as an individual. The value of the business depends upon you personally. Personal goodwill is not valuable to a buyer unless you remain in the business in some capacity.
 - ◆ *Business or Enterprise Goodwill* – this is the goodwill that is attached to the business itself and is not dependent on the owner. It is an asset that

Business Goodwill: Tim’s Total Tattoos is a sole proprietorship. Tim’s skills as a tattoo artist are so much in demand that he attracts customers from neighboring states.

The name “Tim’s Total Tattoos” has intrinsic value based on Tim’s business reputation. It can be sold along with other business assets, such as Tim’s original tattoo designs, customer list, equipment, and inventory.

is sold with the business. Texas courts typically treat enterprise goodwill as community property that is subject to division between the spouses.

- ◆ **Intellectual Property** This category can include far more than trademarks and patents. Each item of intellectual property has value independent of the others. Here are a few:
 - **Trademarks** –If a buyer wants to use same name and serve the same customer base, your trademark is an asset that has value independent of the business. You can sell the trademark with the business, or lease it to the buyer while retaining ownership of the trademark. The new owner benefits from the trademark and you retain ownership.
 - **Patents** – If you hold any patents, you can sell it to the new owner or license the rights and retain ownership. If you use patented and licensed items or processes in your business, you will need to make sure that your license is either transferable to the purchaser, or that the purchaser can obtain a license to continue the business. If your business uses patents or licenses that belong to someone else, you cannot sell or transfer the patent or license without permission from the patent holder.
 - **Trade secrets** –A secret process, formula, recipe or other secret that is not patented can have an individual value that can be counted among the business assets to be transferred or sold.
- ◆ **Digital Assets** – A business website or social media account can be sold like any other business asset. Prepare an inventory of your digital assets just as you would your physical assets. You can turn over user names and passwords at the time of transfer or sale. Digital assets can include nearly everything about your business that leaves a digital footprint, including:
 - product accounts;
 - digital photos relating to the business;
 - business email;
 - social media accounts (Facebook, Twitter, Instagram)
 - domain registrations;
 - web-hosting accounts; and
 - websites and blogs

IMPORTANT: Your sales tax permit and other permits and licenses required to run your type of business - for example day care, food handler, alcohol/TABC license - are *not* business assets and *cannot be sold or transferred*.

Permits and Licenses

Permits and licenses required to run your business, such as your sales tax permit or TABC license are *not* business assets and *cannot be sold or transferred*.

Business Valuation: Debts and Liabilities

Under a sole proprietorship, there is no legal difference between personal debt and business debt. Selling your business will not help you avoid paying your business debts because your debts can't be transferred.

Remember, if your business has a lot of debt it will be less attractive to a buyer and your business will be harder to sell. Your choices are to pay off the debt before selling your business, or make a written agreement with the buyer to assume ownership of your active vendor accounts and business debts. Otherwise any profit you make from the sale of your business will go to paying off debt. If debts are too high, you could land in bankruptcy court. Part of your succession plan should include a plan to pay down your business debts and liabilities so they won't interfere with the sale of your business and won't be part of your estate when you die.

How much of the business do I actually own?

Along with knowing what your business assets are worth, it's also important to know how much of the business you actually own. In a sole proprietorship, business property is treated the same as personal property. For example, your family car is personal property, but so is your business equipment. If you are married, your spouse has a financial stake in your business. Knowing whether your property is community or separate can have an impact on your succession plan. It also matters whether the asset is personal property or real estate, because real property and separate property are treated differently.

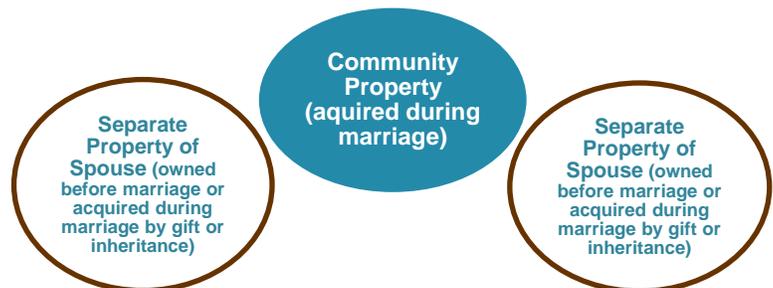
Texas Marital Property

Texas is among the minority of states that recognize community property. Community property is property acquired by both spouses during the marriage – such as income, real estate, retirement savings, vehicles, and other personal property. By law, all marital property is community property unless the owner can prove it is separate property.

Separate property is property owned by one spouse before marriage, or acquired during the marriage by one spouse as *gift*, through *inheritance*, or through a personal injury settlement. Whereas community property assets can be divided between spouses (or the estate of a spouse), but separate property belongs to one spouse only.

You can only sell or transfer what you actually own, and if you have community property you don't own 100%. Even if you have a separate bank account set aside just for business expenses and income, it's still a personal account. When you are a sole proprietor, your business

and personal property are the same. If the property was acquired during your marriage, it is community property unless it is proven to be separate property of one spouse. Community property is not always divided equally between spouses, either. Texas courts are only required to make a "just and right" division depending on the circumstances.



Community Property:

Shortly after Vivian and Marco were married, Vivian opened an auto upholstery business as a sole proprietor. 10 years later, Vivian wants to sell it. All income and assets from the business are community property because the business was formed after the marriage. As the sole owner, the decision to sell the business is Vivian's. However, proceeds from the sale of the business are community property belonging to both spouses.

Some marital property can be mixed - both community and separate – depending on when the property was acquired. You and your spouse are also liable for debts and obligations accrued during the marriage, business or otherwise.

Issues about community and separate property often arise on divorce or on death of a spouse. But they also come into play also when a married sole proprietor wants to sell or give away business assets.

Mixed Community and Separate

Property: Jorge started selling handmade jewelry in 2006. The business took off, and revenue increased every year. Jorge married Violet in 2010. All business income and assets acquired before the marriage is Jorge's separate property; all business income and assets acquired after 2010 is the community property of both spouses.

Common law marriage - If you've avoided marriage as a way to protect your assets, you should know that

Texas law still recognizes common law (informal) marriage. A common law marriage doesn't depend on how long you've been living together or whether you have children. There is a specific legal test that relies on many factors. Also, a probate court can recognize a relationship as a common law marriage even after the death of one common law spouse. Once recognized, a common law marriage is treated the same as any other marriage, and community property rules apply.

Keeping the Business in the Family

Keeping the business in the family is often the primary goal of succession planning. A succession plan can reduce stress and uncertainty for you and your family. It will also increase the odds that your business will continue to provide income for the next generation. Without a plan, your business can quickly deteriorate as your family argues about ownership and management. And, because your personal assets are treated the same as your business assets for purposes of inheritance, you should use the tools listed in the preceding section on Estate and Probate.

Succession Time Line

Think about the time line for succession. Have you thought about which family members have the motivation, skill set and desire to run the business? Some business owners require the family successor(s) to get a degree or be licensed in the profession (electrician or cosmetologist, for example) before training them to take over. Your successor must not only learn the mechanics of operating the business, but also how to cultivate business relationships with customers, suppliers, bankers and others. Training is an ongoing process. It can take weeks, months, even years for someone else to learn to do what you do.

Equal vs. Fair

You should also give serious thought as to whether ownership and management of the business should be equally divided among your family members. Your business might provide enough income for your family right now, but can it provide enough future income for your children's families? Some of your children may be enthusiastic about taking over, while others have different ambitions and career choices in mind. Equal authority among family members often leads to disagreements and power struggles. The future survival of the business might mean giving some family members more management authority, higher compensation and a greater share of the business assets than others. If the point is to pass a healthy business to benefit the next generation, remember: equal is not the same as fair.

Ownership Succession vs. Management Succession

Another option is to transfer management to your child or family member while you retain ownership of the business. This would allow you to train your family members and see who is suited to the business before letting go of ownership. Ownership could be passed down in installments, over time. Management could stay with those children active in the business and leave your inactive children with some business income but no management or decision-making responsibilities.

Will I have enough to retire?

Since your business assets are the same as your personal assets, succession planning necessarily involves planning for retirement. Selling your business to fund your retirement can be part of your plan - IF you can find a buyer and IF you can sell it for what you think its worth. You might need more than a business sale to fund a comfortable retirement.

Strategies for saving and investing for retirement are beyond the scope of this guide. There are a number of good [retirement resources](#), including and free [retirement calculators](#) that can give you an idea of how much you'll need to save in order to maintain a decent standard of living in retirement. You should also know how being self-employed can affect your social security retirement benefits.

Self-Employment Taxes - If you haven't been paying Self Employment taxes, don't count on Social Security as your sole source of income when you retire. Self-Employment tax is the Social Security and Medicare tax paid by people who work for themselves. The amount you get in

retirement is based on how long you've paid into the system, either through payroll deductions as an employee or through self-employment taxes if you work for yourself. The amount of time you need to work depends on your date of birth. At minimum, you need to pay into the system for [10 years of work to get the minimum 40 credits](#). If you're self-employed and not paying Self Employment taxes, you won't be earning these credits and won't get your full retirement benefits.

If you haven't been paying, now is a good time to start. Pay self-employment taxes when you file your income taxes by filing Schedule SE (self-employment tax) along with Schedule C (profit or loss from business) with your tax return.

What happens to my business when I die?

Estate planning is a key part of succession planning. An estate plan deals how your assets will be distributed to your heirs when you die. The activating event is your death.

Estate Planning and Probate

For sole proprietors, having an estate plan is especially important. With an LLC or LLP, the business belongs to the entity. The operating agreement or partnership agreement state what happens to the deceased person's share of the business, and there is little or no business disruption. In a sole proprietorship, your business assets and everything else you own must pass through probate unless you've done some estate planning ahead of time. Probate is a court proceeding that distributes your assets to your heirs. Probate is supposed to make sure that everyone is treated fairly. If you have a will, you decide who gets your property. If you haven't made a will, the state decides who gets your property.

Debts of estate - Debts, business or otherwise, will be paid from your estate if you have assets left to cover them. The IRS, Medicaid, child support enforcement and other creditors can file claims against your estate for payment or reimbursement. If you had a lot of business and personal debt, there may not be much left to distribute to your heirs. What's left will be subject to estate taxes before it can be distributed. The goal is to reduce your taxable estate through estate planning and other tools. For example, if you make a gift of your assets to family members over time, while you are alive, there will be less left in your taxable estate when you die.

Dying with a will

With a will, your business will be divided or passed on according to your wishes (subject to the community property interests of your spouse). You can specify in your will whether you want to pass the business on, sell it, or liquidate it. You don't need to list each business asset in your will as long as you make it clear what property you mean. A statement in your will that says something like "all equipment related to the business" would probably be enough to make your intentions clear.

When you die, your will is admitted to probate (filed with the court). The executor you named in your will track down your creditors, list their claims and use your assets to pay them. If you have

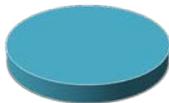
life insurance, the proceeds can be used to pay creditors. What's left will pass to the beneficiaries you named in your will. There is very little court intervention and the probate process can be over relatively quickly.

Dying Intestate (without a will)

If you die without a will, you have no say in who inherits your business assets or any other property. Remember, there is no barrier between a sole proprietorship and personal assets. If you have high business expenses, all of your assets and accounts can be used to pay them off. Without a will, there may be one or more court hearings to determine the identity of your lawful heirs, assets and liabilities of your estate, creditor claims and other details. Court costs and attorney fees will be paid with money taken out of your estate. While your estate goes through probate, the court may freeze your assets. This protects your creditors – your heirs can't simply empty your bank accounts. With all of your assets tied up in probate court, however, your business can't meet its financial obligations. *This is the point at which many family-owned businesses fail.* The business assets often must be sold in a hurry and at a discount to pay creditors of your estate.

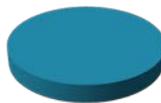
If you're married - Without a will, after the heirs are determined and debts are paid the rest of your assets are divided according to Texas law. If you are married, this is how your assets will be divided:

COMMUNITY PROPERTY
when all children are
children of surviving spouse



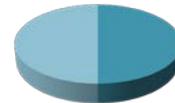
■ All to surviving spouse

COMMUNITY PROPERTY
no children of marriage or
outside of existing marriage



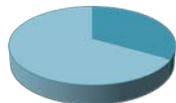
■ All to surviving spouse

COMMUNITY PROPERTY
when there are children outside of
existing marriage



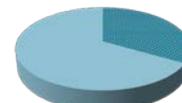
■ 1/2 to surviving spouse
■ 1/2 to children, who share equally

SEPARATE PERSONAL PROPERTY
owned before marriage or acquired
during marriage through gift or
inheritance



■ 1/3 to surviving spouse
■ 2/3 to children, who share equally

SEPARATE REAL ESTATE
owned before marriage or acquired during
marriage through gift or inheritance



■ 1/3 life estate to surviving spouse
■ all to children, who share equally, subject to 1/3 life estate

If you're not married - Community property only applies if you are married. If you're not married at death, *all* of your children, born or adopted, in or out of wedlock will share *equally* in your estate. Your grandchildren will get nothing, unless their parent (your adult child) dies before you. Then your child's share will be divided equally among your grandchildren.

If you're unmarried and childless, your estate will be divided equally among your parents. If one parent is alive, that parent will get ½ half and the remaining ½ will be divided among your siblings. If your parents are dead, your estate will be divided equally among your siblings.

Think about it. Assuming your business makes it through the probate process, it is likely to survive if inherited by family members according to Texas law? If you haven't gotten the message: MAKE A WILL. For a sole proprietor, a will could be the single most important part a succession plan.

Succession Planning Tools

As a sole proprietor, your business and personal assets are one and the same. For this reason, business succession planning tools overlap with estate planning tools. A will is only one of the tools in the toolbox. Here are a few more:

Non-probate Assets

Some of your assets can pass automatically to your heirs without the need for probate. These include:

- ◆ bank accounts payable on death,
- ◆ Insurance proceeds,
- ◆ retirement funds (IRA, 401k, pension) and
- ◆ real estate under a transfer on death deed

These assets pass to the person you named as beneficiary on the contract or account. Part of your succession and estate plan should be to ensure that your beneficiary designations are up to date so that your property will go to the person you want to have it.

Joint bank accounts and jointly held real estate - If a bank account has another name on it (such as your spouse's name) the account automatically passes to the joint owner. Since it does not pass through probate, the joint owner can access the funds immediately. The same goes for jointly held real estate with a right of survivorship – the surviving owner owns all of the real property without going through probate.

Motor vehicles - If you die without a will, your heirs can use an Affidavit of Heirship for Motor Vehicle to transfer title to *one* of them. All of the heirs must agree which one gets the vehicle, and all must sign the Affidavit in front of a notary. No court approval is required. The form for the affidavit is [Form VTR 262](#) available from the Texas Department of Motor Vehicles.

Life Insurance

Life insurance can increase the odds that your business can carry on after you die. Life insurance proceeds provide a financial bridge for your family and your business until your estate is sorted out. This gives your spouse time to get a handle on who your vendors are, when payments are due, and what kind of notice period is necessary to close out accounts. I can also buy time to try to find a buyer for the business if necessary, to avoid selling it at fire sale prices.

Gift Tax Exclusion

Changing ownership does not necessarily mean giving up control and income. You can create a succession plan that transfers ownership gradually while you still run the business and receive income. You can take advantage of the gift tax exclusion as a way to transfer business assets (which, for tax purposes, are the same as personal assets) to your family. If you are single, you can transfer up to \$14,000 to each child each year. If you are married, you and your spouse can give \$28,000 to each child each year. Transferring your assets this way can reduce your gift taxes without giving up any business income.

Agreements between Spouses

By definition, a sole proprietorship has only one owner. As a sole proprietor, you have the right to make business decisions regarding the ownership and operation of your business. If you and your spouse operate the business jointly, then it is not a sole proprietorship. Merely filing a joint tax return that includes the profits of your sole proprietorship will not convert it into a partnership. Although you make the decisions, remember that if you are married all business income and assets acquired during a marriage are community property.

Texas law allows community and separate property to be altered by agreement. A spouse can convert community to separate property or separate to community property if certain legal requirements are met.

Pre-marital agreement - A couple intending to marry can enter into a written pre-marital agreement (sometimes called a prenuptial agreement) to convert or clarify community and separate property. For example, a pre-marital agreement might state that for a wife's separate property business (a business started before the marriage) all assets, income and future income from that business are not community property but are the sole and separate property of the wife/owner/spouse.

Post-marital agreement - Texas law also allows spouses to enter into agreements with each other following marriage. Post-marital agreements can convert community into the separate property of one spouse, or to convert a spouse's separate property into community property of both spouses.

Regardless of whether the agreement is a pre-marital agreement or a post-marital agreement:

- ◆ The agreement must be in writing.
- ◆ The agreement does not require consideration - that is, no exchange of money is required.
- ◆ An agreement to convert a spouse's separate property into the separate property of the other spouse must contain certain warnings and disclosures to be legally valid.
- ◆ A business owner who transfers business assets into the name of the other spouse will not stop creditors or prevent a bankruptcy.
- ◆ A transfer of assets from one spouse to the other might have tax consequences if viewed as a gift between spouses by the IRS.

If you want your spouse to inherit your share of the business, you can always pass your community property share to your spouse through a bequest in a will.

Power of Attorney

A power of attorney (POA) is a legal document that authorizes the person you name to take legal action in your behalf while you are still alive. It must be made by you while you are competent to make it, otherwise it is invalid. The powers you authorize can be very broad, or limited to a specific purpose or transaction. A POA cannot be enforced like a court order. A court order always prevails over a POA. For a small business owner, a POA has many advantages:

- ♦ It can save the time and expense of getting a court-ordered guardianship, which can be a lengthy and expensive process.
- ♦ You can revoke it at any time.
- ♦ It can keep your business going if you are unable to make decisions.

It's important to remember that a POA gives an agent virtually unlimited financial control, and that the powers can be abused by a dishonest agent. For this reason, a durable power of attorney ("statutory durable power of attorney") can only be prepared by an attorney and must contain certain warnings. A POA prepared by a non-attorney is practicing law without a license, a criminal offense. An agent who steals under a power of attorney can be prosecuted for financial abuse.

Advance Directives

Advance directives are part of estate planning and are worth mentioning here. Advance directives allow people to make their own *health care decisions* directly or through someone they've named to make those decisions for them (health care surrogates. More about Advance Directives, including free forms and instructions in English and Spanish are available from the [Texas Department of Aging and Disability Services](#).

Transfer on Death Deed (real property only)

A Transfer on Death Deed (TODD) is a simple way to transfer real estate to someone else after you die. It is a non-probate transfer of property using a simple deed, similar to a Payable on Death account at a bank, only for real estate. If you don't have a will or a TODD, your real estate must go through the probate court and your property will pass to your heirs according to Texas law. Probate can be lengthy and expensive, with attorney fees and court costs paid from your estate. With a TODD, you can avoid probate and decide in advance who should inherit your real property interest.

Letter of Instruction

A letter of instruction can spare your loved ones the trouble of hunting down important information when you're not available to provide it. Its purpose is to gather important information and details about running your business and instructions on how to access it. It can be part of your succession plan, or as a supplement to a will or power of attorney.

There is no special form for a letter of instruction. It can include contact information for your bookkeeper, insurance agent, landlord, attorney, tax preparation person and other professionals. It should also include information on customers, clients, and suppliers; access codes to bank accounts, credit card accounts, social media and other online services. The letter should state where your important business documents can be found. You can include a business "to do" list

of things that need immediate attention if something happened to you, such as the due date for payment to a creditor or supplier, bank deposits, etc.

Selling or Transferring Your Business

A sole proprietorship is essentially a collection of assets that you're selling to another person, with estimated future profits based on performance in previous years. Starting a sole proprietorship business involves no formal paperwork and no separate income tax return. From the IRS standpoint, the individual owner and the business are the same. You cannot directly sell or transfer your sole proprietorship as a business entity, but you can sell or give away some or all of your business assets to another company or an individual. For the sole proprietor, the tricky part might be separating your business assets from your personal assets and potential tax liability from the sale itself.

Selling a business doesn't always take place in the context of ready seller and willing buyer. It often involves an unprepared seller and a buyer preying on the misfortune. You may have an emotional attachment to your business, but a potential buyer will not. Be realistic about the value of your business to someone who has no emotional investment or attachment to it.

Types of Business Sales and Transfers

Be aware that each of these methods will have different tax consequences.

Outright Sale

You can sell the business in full, transfer ownership of inventory and assets, and receive payment right away. In addition to the value of business assets, the sale price will depend upon the market for your goods and services and whether you need to sell the business in a hurry at a discounted price.

Installment or Gradual Sale

This may be a good option if you can't afford an outright sale because you still need business income. With a gradual sale, you finance a long-term payment plan. There is no sudden business disruption that can accompany the transfer of ownership, and you have the peace of mind.

Owner-Financed Sale: Jalaja owns a small jewelry store. She has reached a point where she would like to spend less time with the business and more time with her grandchildren. Jalaja's longtime employee Nishar would like to buy the business, but can't put up all of the money at once. Jalaja can sell the business to Nishar gradually, over time. By financing the sale of the business, Jalaja receives income until the sale is complete.

If a family member is buying you out, consider a *self-cancelling installment note*, which allows the balance to be cancelled in the event of your death.

Combination Gift and Sale

You can sell some of your business assets and give others away. You can, for example, transfer management responsibilities now and sell the business over time, even years, by financing the sale yourself. The buyer doesn't have to come up with the purchase price all at once, and you still receive income from the business until the sale is complete. Or, you could give your liquid assets away over time to family members by using the gift tax exclusion. Sale and gift options can be used in combination.

Lease/Sale

You can transfer temporary ownership of your business through a business lease. The leasing contract will commit you and the lessee to terms and conditions of the lease and payments you'll receive for the temporary rights to the business. It also allows you and a potential buyer to take a "test drive" before committing to a sale.

Transfer or Sale to Spouse

An owner may want to transfer the business to her spouse for a variety of reasons, including retirement, asset protection or to start a new business. Transferring a business from one spouse to another will not hold off creditor claims or prevent bankruptcy, however. The business can be transferred outright or over time, or through a temporary lease. Each process has its own legal, financial and tax implications.

Leasing the Business: Roshan owns a day care center and wants to take a break from the business before deciding to sell. He leases the business to his friend Jana for a specified period of time. Jana takes over management, business operations and some or all of the business income for the leased period. Roshan has time to decide whether he wants to retire from the business and whether to sell it to Jana or another buyer.

Liquidation

Sometimes closing the business and selling all assets is the best option, especially if your business doesn't have a ready buyer and you need cash in a hurry. If possible, work with a qualified business appraiser to get a written liquidation appraisal. If you're liquidating, you will be selling your business assets at a loss. The liquidation value of an asset is *at least 20%* less than its fair market value. It pays to do some research ahead of time to decide if liquidation is your best option.

The **liquidation value** of an asset often is at least 20% less than its fair market value.

Start by estimating the liquidation value of each of your assets. First, determine the asset's fair market value. Then deduct at least 20% from that value and subtract the amount secured by a lien, if any. For example, suppose your business is a restaurant and you are making monthly payments on a commercial oven. The fair market value of the oven is \$6000, and you still owe \$3000 on the balance. The liquidation value of the oven is \$1800 (20% of \$6000 = \$4800; subtract the \$3000 lien balance = \$1800).

If a liquidation sale doesn't look worthwhile, consider other options for selling business assets, including:

- ◆ Consignment sale,
- ◆ Going out of business sale,
- ◆ Sealed bid sale, or
- ◆ Auction (online or live).

The details on the many ways to liquidate business assets are beyond the scope of this guide. Find out more about business liquidation from the [Small Business Administration](#).

Preparing to Sell

Business Documents

If you were buying a business, what kind of information would you want the seller to provide? You should be able to produce well-organized, accurate records for any potential buyers. This including several years of financial records, contracts or agreements you have with clients, suppliers, and other businesspeople.

Take the first steps towards preparing for sale by gathering and organizing the key documents for your business. These might include:

- ◆ Business operations manual
- ◆ Employee training information
- ◆ Business plan and market analysis
- ◆ Financial records for preceding 3 years or more
- ◆ Copies of Schedule C of your income tax return
- ◆ An organized customer list or database
- ◆ Copyright, trademark registrations, and other intellectual property
- ◆ Leases and other contracts
- ◆ Permits and assumed name filings
- ◆ List of login information to your various accounts.

Many items are not transferable to the new buyer, including permits and assumed name certificates. Other items cannot be transferred or otherwise changed without permission of the property owner or lienholder, such as leases or assets under a financing agreement.

Confidentiality Agreement

Before sharing any private information, have the potential buyer sign a confidentiality agreement. The agreement can remain in effect until all terms of the sale are met (all money and property has changed hands), or for an indefinite period of time if the business is not sold or the sale falls through.

Adjusting Financial Statements

You may need to adjust or "re-cast" your financial statements before preparing to sell. Typically, an owner tries to minimize profits in order to reduce taxes on those profits. For example, as an

owner, you may be paying yourself a larger salary than market value, or you may have hired family members to work for you at higher salary. Or, you could be spending down profits by paying or leasing vehicles that you use for both business and personal purposes. Added together, these can make it appear that your profit margin is lower than it actually is. When you want to sell, you may need to adjust or recast your financial statements to give a buyer a more accurate picture of the profit potential of your business.

Important note: Do not try to hide any adjustments to your financial statements. You're not trying to hide or cover up these changes. You are trying to present the statements in a more realistic way for a buyer to see the true profit.

Disclosures and Disclaimers

As the seller, you must be prepared to make certain disclosures to the buyer about your business and your business assets. An example would be if a lawsuit has been filed against your business or you have received a legal demand letter, which is a warning that a lawsuit might be filed. Your buyer should know up front if you are late on payments for your commercial lease or if you are not current on payments for business-related equipment. Selling your business will not stop a bankruptcy. You are still responsible for any outstanding business liabilities and debts at the time of sale.

To avoid future liability, you must also disclose any known defects in the assets you might be selling. For example, if you are selling an ice cream shop and you know that the freezer is broken, you must tell the buyer. Then you and the buyer can adjust the sales price of this asset and maybe re-negotiate the overall sale price of the business.

Sales Proposal

For a sole proprietor, a potential selling point is that the decision to sell is yours alone and that the sale and transfer can be completed quickly. Prepare a sales proposal for potential buyers. This proposal should highlight the strengths of your business and its future prospects. This is where your business and market analysis can be a tool to help persuade the buyer that your business is healthy and will continue to be a going concern.

Know Your Buyer

Ideally, you will not meet buyers when you are desperate to sell, and will have time to negotiate and consider more than one offer. Research your buyer. Does the buyer have similar business experience and know-how? Is the buyer looking for a new career, or as a way to supplement existing income? Do you have trained employees who might be willing to work for the new buyer?

If you are fortunate enough to have several offers, keep in mind that the highest offer might not be the best. A purchase made in a lump sum in certified funds, like a cashier's check, might save you from a buyer that defaults if paying in installments.

Buyer's credit report - If your buyer intends to finance the sale, get the buyer's permission to run a credit report. Credit reports are a usual part of doing business, from apartment rentals to loan agreements. If your buyer is reluctant to allow a credit report, you might want to reconsider the offer. You need to know whether your buyer is financially solvent before you close the deal.

The Sales Agreement

A written Bill of Sale is essential. The agreement should contain all the terms of the purchase, all of the business assets, customer lists, intellectual property and goodwill. Update your written inventory to list each asset being transferred and its sale price (based on fair market value). This list can be attached to the sales contract as an addendum. Be sure to include other special provisions. If, for example, your given name is part of your business name, the sale of the business should include a mandatory name change. If your given name carries a branding advantage for the new owner, you can agree to lease the brand or mark for a fee.

Here is a checklist of what your sales agreement might contain:

- ◆ Names of seller, buyer, and business
- ◆ Background information
- ◆ Assets being sold
- ◆ Purchase price and Allocation of Assets
- ◆ Covenant Not to Compete
- ◆ Any adjustments to be made
- ◆ Terms of the Agreement and payment terms
- ◆ List of inventory included in the sale
- ◆ Any representation and warranties of the seller and buyer
- ◆ Determination as to the access to any business information
- ◆ Determination as to the running of the business prior to closing
- ◆ Contingencies
- ◆ Fees, including brokers fees
- ◆ Date of closing

Non-recourse bill of sale; release of liability - When selling business assets, make sure that the bill of sale states that the item is sold "As is, Where is." This can help avoid disputes over implied warranties of merchantability or fitness. Your agreement should also include a release of liability; that is, buyer assumes all liability from the date of the sales agreement forward

Employees

As a sole proprietor, you are not selling an entity; you are selling your business assets. In an asset deal, the seller ends the employment relationship with all employees. In non-technical terms, that is a 100 percent layoff. Letting go of your employees can be difficult, especially when the new owner doesn't need them. Meet with your employees in person and explain the situation to them.

Layoff notice - [Texas law does not require written notice of termination](#) or layoff, but a simple, written notice of work separation can help prevent employees from later claiming that they are owed additional pay beyond the work separation date, because they had no advance notice of layoff.

Final pay - In cases where the employee has no choice but to leave at a certain time, Texas law says the work separation will be considered involuntary. The employee is entitled to final pay within 6 calendar days from the date of discharge. "Final pay" includes regular wages, fringe benefits payable under a written policy, and any other component of the pay. For more information, contact the [Texas Workforce Commission](#).

Wrapping up the Details

There are a lot of loose ends associated with the sale or transfer of your business including canceling permits, notifying vendors and creditors, closing bank accounts and abandoning your business name (dba). The following is a short summary of things to consider when selling or closing your business.

Business Name

Sole proprietorships are not "filing entities" and most operate under an assumed name instead of the name of the owner. In Texas, an assumed name, ("doing business as", or DBA) *cannot be transferred* to anyone else. You must file a Notice of Abandonment with the county clerk to formally abandoning your DBA. The new owner is then free to file a new assumed name certificate.

Sales Tax Permit

Sales tax permits *are not transferable*. Every business that sells or leases property or sells taxable services must have a Texas Sales Tax permit from the Texas Comptroller. This includes sole proprietors. Your sales tax permit is valid only to you and for the business address show on the permit. It cannot be transferred or sold. You must notify the Comptroller and cancel your permit when you are no longer an active seller. If your business has changed ownership, the new owner must get a new permit. A new permit is also required if the business changes form, for example, a sole proprietor that wants to file as an SMLLC. As a sole proprietor, you do not need to file a

Sale of Dog Days Diner:

Marge is the sole proprietor of a restaurant operating under the name "Dog Days Diner", registered as a DBA with the county clerk. The name is also trademarked. Marge owns all of the business equipment and operates from a leased space in an established location. Jorge wants to buy Dog Days Diner and operate from the same location.

Name - Marge cannot transfer her assumed name (DBA) to Jorge. Jorge must file a new assumed name certificate. The trademarked name is also a business asset. The sales agreement should include a provision of the sale or license of the name to Jorge.

Equipment – Selling the business means selling all assets "as is, where is" -kitchen appliances, tables, chairs, cash registers, pie case, etc.

Leased space – Marge can't sell space she doesn't own, but knows that her business would fetch a higher price if it could stay in the same location. Before offering it for sale, Marge reviewed her lease and obtained her landlord's agreement that a creditworthy buyer could take over the lease.

Permits and licenses – Marge cannot transfer her Sales Tax Permit, TABC license, food handlers' permit or any other licenses or permits. Jorge must apply in his own name.

EIN – Marge has employees and therefore must have an EIN. Marge must cancel her EIN and Jorge must apply separately.

Certificate of Account Status with the Comptroller stating that all taxes have been paid before selling.

Other Permits and Licenses

The State of Texas does not require a general “business” license, but there may be several licensing and permitting requirements based on the service or product that you provide. Like the Sales Tax Permit, these permits *are not transferable*. When you sell or close your business you must cancel the permits and the new owner must reapply. Contact your local county and/or city government where you do business to notify them that you are canceling your permits and of the exact date of cancellation. That way, you won’t be liable for any permit violations committed by the new owner.

Title Transfers

If you sell business assets, such as a delivery vehicle bearing the name of the business, make sure that the title is transferred to the new owner. If there is a lien against the property, you must pay it off before you can transfer the title to the new owner. If real property is part of the sale and you own it free and clear (no mortgage or liens) you can transfer title through a general warranty deed. Check the deed records in the county where the property is situated to make sure that there are no liens or encumbrances, or your sale might not be valid.

Commercial Lease

Depending on your business and goodwill, your buyer may want to stay in the same established location. Your lease can be an asset that affects the sale price of your business. Get advance permission from the property owner or landlord about any proposed changes to the lease or the tenant. If the landlord allows it, the buyer can assume (take over) your lease. As seller, this is the best arrangement because you will have no future obligations under the lease. If the buyer assumes your lease, make sure that the buyer has a written lease agreement directly with the landlord that specifically releases you from the current lease.

Another option is to sublet to the buyer until your lease is up. Be aware that if you sublet, you stand in the shoes of the property owner. This means that if your new buyer skips out, you might be responsible for the balance of the lease. Make sure that your buyer has good credit and the ability to pay rent, that you have the landlord’s consent to sublet, and that all agreements relating to the lease are in writing.

Bank Accounts, Vendors, Suppliers, Creditors

Notify in writing all of your vendors, suppliers, contractors and other businesses and creditors that you have sold the business. Close your business bank accounts, lines of credit and business credit cards, effective as of the date of business sale. Settle remaining debt by negotiating with the creditor. This might include an agreement to close the account and continue to pay down the debt after the business is transferred. Include the date of the sale, and that you assume no debts of the new owner as of the date of the sale.

Insurance Carriers

If vehicles or equipment are sold with the business, be sure to cancel any insurance against the property, such as your auto liability insurance. If you're dealing with an insured item other than a vehicle, it's a good idea to discuss the sale with your insurance carrier beforehand. Send a letter to all insurance carriers that cover your business, vehicles and equipment notifying them of the sale or transfer, the date, and that you are no longer the insured.

Customers

Customer notification can be a delicate matter, particularly if your customer list is part of the sale. Consider writing a letter of introduction of the new owner to your customers, but make clear that you will no longer be responsible for any dealings they have with the new owner.

EIN with the IRS

Most sole proprietors don't need an EIN (federal employer identification number issued by the IRS) and can use their Social Security number instead. However, a sole proprietor must have an EIN to:

- ◆ Hire employees
- ◆ Have a Keogh or Solo 401(k) retirement plan
- ◆ Buy or inherit an existing business that you operate as a sole proprietorship
- ◆ Incorporate or form a partnership or limited liability company
- ◆ File for bankruptcy.

Also, some banks require you to have an EIN before they'll set up a bank account for your business.

Your EIN is not transferable. If you sell or transfer your business, you must cancel your EIN by following the [IRS instructions to close your business account](#).

If you do not have an EIN, you need only to make sure that the IRS has your current home address, which is the address associated with your Social Security Number.

Maintaining Records

The general rule is to maintain all business records for a minimum of seven years after the business is closed or sold.

Conclusion

Now that you have some information about your options, it's time to put pencil to paper and get started. Revise your plan as many times as needed. Make a checklist. Talk to your spouse and your family, so there will be few surprises and minimal business disruption when you exit. Start training your successor, and set a time line for retirement. It's always a good idea to consult with experts—business appraisers, estate planning professionals and tax experts about your options.

If you start now, your business could continue to produce income for your family and serve the community for generations to come. Just get started!

Forms

Agreement for Sale of Business – Sole Proprietorship

Promissory Note – Sale of Business

Bill of Sale

Agreement for Sale of Business – Sole Proprietor

(with promissory note and schedules)

**AGREEMENT FOR SALE OF BUSINESS
SOLE PROPRIETORSHIP**

AGREEMENT MADE _____, between

SELLER _____

Address _____ City/County/State/Zip

BUYER _____

Address _____ City/County/State/Zip

The parties recite and declare:

Seller now owns and conducts a business known as _____ at
_____, City of _____, County of _____,
State of Texas.

Seller desires to sell and Buyer desires to buy such business for the price and on the terms and conditions hereinafter set forth.

FOR THE REASONS set forth above, and in consideration of the mutual covenants and promises of the parties hereto, Seller and Buyer covenant and agree:

1. Sale of Business. Seller agrees to sell and Buyer agrees to purchase, free from all undisclosed liabilities and encumbrances, the above-described business, including the lease to such premises if approved by the landlord, the goodwill of the business as a going concern, all of Seller's rights under its contracts, licenses, and agreements, and all assets and property owned and used by Seller in such business as specified in Exhibit A, other than property specifically excluded. This sale does not include the cash on hand or in banks at the date of closing or such other property as is listed in Exhibit B.

2. Consideration. In consideration for the transfer of the above described business from Seller to Buyer, Buyer shall pay to Seller the sum of _____ dollars, which Seller shall accept from Buyer in full payment therefore, subject to the terms and conditions herein contained.

3. Allocation of Purchase Price. The purchase price shall be allocated to the various assets of the business as follows:

(a) For real property only - the premises at _____

(b) Equipment, furniture, and fixtures _____

- (c) Goodwill _____
- (d) Stock in trade on premises or to be delivered _____ prior to closing day.
- (e) Notes and accounts receivable _____
- (f) Outstanding contracts _____
- (g) Intellectual property – business goodwill, trade secrets, website, social media, logo, trademark _____

Total _____.

4. Terms of payment. The purchase price shall be paid by Buyer to Seller as follows:
 The sum of \$ _____ on the signing of this contract, to be held in escrow by Seller, and the balance of \$ _____, in cash or by certified check, paid to Seller at the time of closing.

5. Adjustments at Closing. Adjustments shall be made at the time of closing for all operating expenses including, but not limited to, rent, insurance premiums, utility charges, payroll, and payroll taxes.

6. Time of Closing. The closing shall take place on _____, at _____ o'clock. Upon payment of the portion of the purchase price then due to Seller, Seller shall deliver to Buyer such instruments of transfer as are necessary to transfer to Buyer the business and property with full title and free of all liens and encumbrances.

- 7. Representations of Seller.** Seller represents and warrants that:
- (a) Seller is duly qualified under the laws of the State of Texas to carry on the business as now owned and operated.
 - (b) Seller is the owner of and has good and marketable title to the property involved in this sale, free of all restrictions on transfer or assignment and all encumbrances except for those disclosed in Exhibit C.
 - (c) No proceedings, judgments, or liens are now pending or threatened against him or against the business.
 - (d) Seller has complied with, and is not in violation of, all applicable federal, state, and local statutes, laws, and regulations affecting Seller's properties or the operation of Seller's business.
 - (e) Seller will, up to the date of closing, operate his business in the usual and ordinary manner and will not enter into any contract except as may be required in the regular course of business.

9. Risk of Loss by Fire. Seller assumes all risk of destruction, loss, or damage by fire prior to the closing of this transaction. If any such destruction, loss, or damage amounts to more than \$ _____, Buyer may at his option terminate this Agreement. In such an event, the

escrow agent shall forthwith pay to Buyer the purchase money held by him, and the escrow agent shall be discharged from all liability therefore.

10. Assumption of Liabilities. Buyer agrees to assume those contracts listed in the attached schedule of property, Exhibit A, and those liabilities that arise in the ordinary course of Seller's business after the signing of this Agreement but before closing. Buyer shall not be liable for any of the obligations or liabilities of Seller of any kind and nature other than those specifically mentioned herein. Buyer will indemnify Seller against any and all liability under the contracts and obligations assumed hereunder.

11. Law and Forum for Disputes - This Agreement shall be governed in all respects by the laws of the State of Texas as they apply to agreements entered into and to be performed entirely within Texas. Buyer agrees that any claim or dispute against Seller must be resolved by a court located in _____ County, Texas, except as otherwise agreed by the parties.

12. Modification. No alteration or other modification of this Agreement shall be effective unless such modification shall be in writing and signed by the parties.

12. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement at _____

Seller

Buyer

Attachments:

Exhibit A: Schedule of Assets Included

Exhibit B: Schedule of Assets Excluded

Exhibit C: Schedule of Encumbrances

Promissory Note – Sale of Business

PROMISSORY NOTE

\$ _____ County, Texas

Date: _____, 20__

FOR VALUE RECEIVED, the undersigned, promises to pay to the order of _____ whose address is _____, _____, _____ (or at such other place as the holder may designate), the sum of _____ (\$ _____), together with interest of _____ percent annual interest, payable as follows:

Payable in monthly installments of _____ per month, with the first payment being due on the _____ day of, _____ 20_____ and a like payment on the same day of each month thereafter until fully paid.

THERE will be no pre-payment penalty on this Note.

IF DEFAULT is made in payment after demand, and such default shall continue for a period of 10 days, then the holder hereof may, at its option, declare the whole sum then remaining unpaid immediately due and payable. A late fee in the amount of 5% of the payment in arrears, or the maximum allowed by law, whichever is greater, shall be due if the payment is not paid within 10 days of the due date. In case of any default, the undersigned agrees to pay all costs of collection, including a reasonable attorney's fee, whether or not suit is instituted. Any failure to exercise the right to accelerate shall not operate as a waiver.

All payments shall first be charged to late charges, then to interest accrued and unpaid and the remainder to the reduction of principal.

PRESENTMENT for payment, demand, notice of dishonor, protest, and notice of protest are hereby waived by the undersigned. Failure by the holder to exercise any option granted it in this Promissory Note shall not constitute a waiver of future rights. The term "undersigned" shall include all makers, co-makers, endorsers, sureties and guarantors.

Bill of Sale

BILL OF SALE

The seller _____ and buyer _____ have agreed to exchange all assets listed in Appendix A to the “Agreement for Sale of Business” document. The exchange was made for the price of \$_____. The agreement was made on the date of _____.

Seller’s Printed Name

Seller’s Signature

Passing on Your Small Business

***Succession Planning for the Sole
Proprietor***

2016 Edition

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