THE FAMILY BUSINESS LEADER SERIES





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"GET MY COMPANY READY TO BE SOLD" PROTOCOL



Recognizing that many Business Owners either move ahead on their own or approach Deal Makers when they or their companies are not yet in a position to be successfully sold, we've created the "Get My Company Ready To Be Sold" Protocol.

This is a plan of action we work on with Business Owners and Deal Makers to help beat the odds and place a Business Owner and the Company into a position for successful results.

With that in mind, below are some of the main "Deal Killers" which we aim to fix ahead of time (for either a sale to an <u>outside</u> buyer or to an <u>inside</u> buyer).

On the pages which follow are the additional Pre-Sale Actions to be addressed.

Ideally, a Company should always be "Ready To Be Sold." The actions in this Protocol are important always—not just when positioning your Company for sale.

"DEAL KILLERS" TO BE FIXED BEFORE TRYING TO SELL OUR COMPANY ✓ As Applicable Corporate structure not consistent or efficient with what is to be sold and kept. Company Financial Statements do not provide enough credible assurance to potential buyers or do not reflect the

П	Minority owners have not contractually committed to a "bring		Company Business Model.
	along" at the discretion of the majority owner.		Intellectual property has not been adequately or properly
	Seller is not really ready to let go and move on.		protected.
	Seller's expected price is not realistic.		The Leadership Team has not developed a credible forecasting system.
	Seller's expected terms are not realistic.	\Box	The Company's legal housekeeping is not clean.
	Seller is unwilling to stay for a sufficient period to assist transition.		The Leadership Team cannot articulate a full understanding
	The Company's competitive advantage does not protect and grow market share.		of why the Company's Business Model works, how it works and what business the Company is really in.
	Company is too dependent on Seller's continued employment to be successful.		Business operating systems are not well designed or documented.
П	Leadership Team positions do not align with the Business		Necessary licenses or permits are not transferable.
_	Model operational needs.		Innovation and scalability are not embedded into Company Culture.
Ш	The necessary Leadership Team positions are not capably filled.		The Company "Customer Segments" are too broad or too narrow.
	The Leadership Team does not wish to continue post - sale.	\Box	The Company "Customer Channels" are good but not great.
	The Company Culture does not attract and keep the best people.		The Company "Customer Relationships" are good but not
	The Business Model has peeked, with no profitable pivots or new Business Models yet in the pipeline being developed.		great and the Customers are not "Net Promoters". The Company "Revenue Stream" systems are good but not
	Pre-sale tax strategies have not yet been timely implemented.	\Box	great and lack sufficient recurring revenue.
	A sale is not in the financial, career or personal best interests		The Company "Cost Structure" is good but not great. The Company Brand does not translate into customer
	of key Leadership Team members.		acquisitions.
Ш	The necessary Estate Plan features have not been deployed to accomplish a sale if the Business Owner dies or becomes incapacitated.		The Company Sales and EBITDA trend lines are flat or going in the wrong direction and don't merit a buyer's attention.
	The net after-tax proceeds from a sale at a reasonably expected price and terms are inadequate to support the		The Company reputation (such as in the market place or on social media) is good but not great.
	Business Owner's financial needs and expectations.		The Seller does not understand how the Company market
	Due diligence "skeletons" have not been identified and		process works and how it maximizes results.
	addressed prior to the Company sale process.		The Company "Key Partners" relationships, strengths and scope are good but not great.
	Necessary third party consents are not readily obtainable.		
Ш	Pending litigation presents too many risks that cannot be addressed with feasible indemnifications.	님	The Company "Key Resources" are good but not great.
	Existing right-of-first-refusal ownership provisions exist or have not been cleared.	Ц	The Company "Value Proposition" is fading, unclear or just good, but not great (with few new products or services in the pipeline.



"GET MY COMPANY READY TO BE SOLD" **PROTOCOL**



Exit Route Choice			
We understand we have options. We will consider (or have selected) one or more of the following outside and/or inside exit routes and options:			
Exit Routes			Exit Options
Outside Buyer	\Rightarrow		Strategic Buyer Financial Buyer Synergistic Buyer Roll Up Buyer Private Equity Group
Inside Buyer	\Rightarrow		Family Partners Key Employees ESOP
Liquidation	\Rightarrow		Partial Liquidation Controlled Liquidation Fire Sale
Partial	$] \Rightarrow$		Sell Partial Stake Sell Control Stake Redemption / Refinance / Recap Franchise Joint Venture

Company Value Expectations

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We understand several factors go into estimating Company value. Our calculation estimate of Company value using the EBITDA Value Formula estimate is and will be-

	Value Now	Value Target		
	(, 20)	(, 20)	(, 20)	
Net Income	\$	\$	\$	
Add Back				
Interest				
Taxes	- 	- 		
Depreciation				
Amortization				
EBITDA	\$	\$	\$	
Normalize				
Salary				
Expense Reimbursements				
Building Rent				
Equip. Rent	- 	- 		
Non-Recurring				
Non-GAAP				
Non-Operating				
Normalized EBITDA	\$	\$	\$	
Multiplier (e.q., 4-10)	x	x	x	
Business Value	\$	+	+	
Excess Work Capital	+	\$	\$	
Company Loans	()	()	()	
Stock Value	\$	\$	\$	
"				

Normalize" = Add back or subtract where income or expense might be more or less Financial Plan: Our Financial Advisor and CPA will help us adthan true value or arms length situation or where event is not normal. Note: Other pricing or valuation methods may apply (such as Discounted Cash Flow Method, Single Period Capitalization Method, Comparable Sales Method, Adjusted Book Value Method).

Exit Route Term Sheet \square Let's start with some main terms that are key to us. If and when we sell ownership to an inside or outside buyer, we are willing to consider the following main overall financial and business terms: **Transition**. Stay on as key officer for a period of time after the sale. Consultant. Stay on as a consultant for a period of time after the Deferred Compensation. Receipt of deferred compensation as part of the package. Consulting Fee. Receipt of consulting fee as part of the package. Asset Retention. Retention of certain assets (such as building, equipment and/or intellectual property) to be leased/optioned to buyer in exchange for rent/royalty/license fees. Restructure. Restructure the business to sell a division and keep a division No compete. A no-compete covenant payment. Structure. Sale of business assets or sale of stock ownership. Phased. A two phase or multi-phased transfer of part (minority) ownership initially followed by sale of control later. Control. Sale of majority control initially, followed by the balance Price Concession. Receipt of less than full value to help my desired successor owner. Net Cash. Net (after tax) cash-in-pocket of at least \$ Exit Route Sale $| \checkmark |$ We recognize: "All plans are firm ... until changed." At this time we wish to do the following: Not Sell Any Now. Not sell any ownership to any buyer at this time. We want to complete the Pre-Sale Exit Planning process

- Sell Part Now. Move forward with the Partial Exit Route I have selected above.
- Test The Market. We will engage an M&A Advisor ("Market Maker" or "Deal Maker") to do some initial testing of the market to see how well the Company would do. This will be done confidentially to the extent to be discussed with our M&A Advisor.
- Sell All Now. We are fully ready. Move forward now to sell all of our ownership to an outside buyer. To accomplish this, we will engage an M&A Advisor (investment banker, transaction intermediary or business broker),
- Assets Retained. Assets (or divisions) to be retained (and possibly leased to or joint venture with the buyer) include:
 - Market /Deal Maker. We want your assistance to line up an M&A Advisor (investment banker, transaction intermediary or business broker, as appropriate) who is an optimal fit for us.
- Potential Outside Buyers We Are Aware Of Would Be:
- Inside Buyer: Let's discuss how to sell to an inside buyer.
 - dress our post-exit after-tax net proceeds needed.



"GET MY COMPANY READY TO BE SOLD" PROTOCOL



Company Structure Review

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Now is the time to update, re-evaluate and re-think. We will address our Pre-Sale Company Structure and Business Model Strength:

- <u>Business Divisions</u>. Whether our corporate structure needs revision if we wish to retain a particular operating division of the Company (e.g. due to personal preference or if part of the company won't be as attractive or feasible to an anticipated buyer).
- Real Estate. Whether our corporate structure needs revision if we wish to retain and lease to the Company (or to a buyer) the real estate the Company uses.
- Intellectual Property. Whether our corporate structure needs revision if we wish to retain and license to the Company (or to a buyer) specifically identifiable intellectual property that the Company utilizes.
- Leaders. Whether Leadership Team is strong with great retention expectations and if we need to restructure due to the change in leadership team anticipated before or upon our sale (e.g. due to a desire to have each of two persons head a company or due to different leadership skills or approaches needed and available).
- Tax Planning. Whether due to our tax savings plans it becomes necessary or advisable to revise corporate structure.
- Business Model. Whether our existing or anticipated Business Model is fading, needs to pivot and fits our Company's present corporate or divisional structure.
- Asset Protection. Whether a high risk part of our business should be separately incorporated.
- <u>Due on Sale Benefits.</u> The terms and amounts under executive incentives due on sale will be determined.

Pre-Sale Due Diligence Review



We don't want to have hold-ups and possible due diligence deal killers. We will address our Pre-Sale Due Diligence:

- ☐ Corporate/LLC Records. Corporate/LLC Minute Book should be fully up to date, reflecting shareholder and director minutes as well as stock owners, charter documents, bylaws and doing business registrations.
- ☐ Employee Ownership. Review terms of employee ownership (Actual, Phantom Stock or Stock Appreciation Rights).
- Asset Ownership. Corporate records will fully document key asset ownership.
- Debts. Corporate records will fully document all presently outstanding indebtedness and financial commitments.
- ☐ <u>Contracts</u>. A list of all material contacts of the Company (e.g. leases, customer contracts, supply contracts, vendor contracts),
- Intellectual Property. All intellectual property will be listed and protected (e.g. trademarks, tradenames, licenses, patents, etc.).
- Litigation. A description of all pending or threatened litigation will be maintained.
- <u>Licenses</u>. Copies of all material licenses and permits will be maintained.
- <u>Banking</u>. Financial institution relationships will be documented and maintained.
- ☐ <u>Taxes.</u> Tax records, elections and compliance will be documented and maintained.
- ☐ Regulatory. Applicable regulatory compliance (e.g. environmental, OSHA, ERISA) will be documented and maintained.
- Code of Business Conduct. Code of Business Conduct strength, scope and compliance to be reviewed.

Financial Accountability Review



We understand potential buyers expect credible financial reporting. We will address our Financial Accountability:

- <u>Credibility</u>. Whether our accounting system needs enhancements to better protect us and to be fully credible to an inside or outside buyer.
- Accounting Methods. Whether our present accounting methods provide a sufficient reflection of true (and normalized) net income, net cash flow and net worth of the Company.
- ☐ Internal Controls. Whether sufficient internal controls are built into our accounting system to provide current financial protection as well as reliability to outside buyers.
- Financial Statements. Whether our outside, independent CPA report should be a compilation, review or audit, based on the degree of financial statement reliability needed by us and which is anticipated to be needed by a future buyer.
- Projections. Whether we have a credible projections process.

Pre-Sale Tax Planning Review



We realize the tax law offers opportunities to reduce tax impacts of a sale—if timely deployed in advance. We will address our Pre-Sale Tax Planning:

- "C" versus "S" Tax Election. Whether "S" tax status should be elected/ maintained to avoid double tax on sale of Company's business (in an asset sale) and to reduce capital gain due to increased tax basis (in a stock sale). To achieve full double tax relief, "S" status needs to be elected at least 5 years before sale.
- Deferred Compensation. Certain tax planning is needed throughout the life of the Company to minimize taxes upon the sale. Documenting deferred compensation agreements and "under-compensation" situations to justify deductible compensation and bonuses will be considered.
- ☐ Intangible Assets. Whether intangible assets (e.g. certain goodwill) should be documented as owned by the business owner (rather than the Company) to help avoid double tax on sale of the business.
- ☐ Multiple Entities. If a particular business division is going to be retained, then advance company restructuring (e.g. spin-off) needs to be considered to achieve optimum tax results.
- Catch-Up Payments. Pre-sale documentation of underpayment of building or equipment rent, to be caught up/deducted upon or before Company sale, should be considered.
- State Taxes and Incentives. Impact on various state tax and incentives matters should be addressed.

Sellability Control Review



We don't want our deal held up or killed due to third party control. We will address our Sellability Control:

- <u>Customer Agreements</u>. Customer agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- ☐ Loan Agreements. Loan agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- <u>Supplier Agreements</u>. Supplier agreements will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- Owners. The Buy-Sell Agreement will include "bring along" provisions which enable the majority shareholders to require the minority to sell on the same price/terms as the majority owner.
- Intellectual Property. Intellectual property ownership (e.g. patents, tradenames, domain names, key processes) will be reviewed to determine if it is solely owned by the Company or if control and transfer rights need to be obtained.
- Leases. Building and equipment leases will be reviewed to minimize or eliminate change of control and change of ownership provisions.
- Franchise Agreements. For Franchisees, the Franchisor consent standards and purchase options will be addressed.



THE "GET MY COMPANY READY TO BE SOLD" PROTOCOL



Buy-Sell Agreement		Business Continuity Agreement	
Between now and final sale, many things could happen. To help achieve owner alignment, we will address the following in our Buy-Sell Agreement between the Owners and the Company:		Our Company will be more attractive and valuable when fundamental safeguards are in place. We will address the following in a Business Continuity Agreement between the owners and the Company:	
	Stock Transfer Restrictions. Restricting owners from selling sha any other person without first offering the shares to Company and to other on the same terms.		Board Approval Actions. Whether to spell out those actions which require Board of Director approval.
	Estate Plan Transfers. Whether transfers to family and family trusbe permitted.	sts will	Right to Engage In Competing Businesses. Whether co-owners should be restricted from investing in competing businesses.
	<u>Death</u> . Options/requirements to sell and buy upon an owner's death.		Required Resignation. Whether a co-owner who sells his or her stock must resign as an officer and director.
	<u>Disability</u> . Options/requirements to sell and buy upon an odisability.	wner's	☐ Subchapter "S". Whether to be a subchapter "S" corporation.
	Termination of Employment . Options/requirements to sell and but an owner's termination of employment.	y upon	Stock Redemption Provisions. Whether the company will set up a redemption pool to let owners periodically cash in shares.
	Bankruptcy . Options/requirements to sell and buy upon an obankruptcy.	wner's	Annual Dividend Payments. Whether to establish a dividend policy.
	<u>Divorce</u> . Options/requirements to sell and buy upon an owner's divo	rce.	Board of Director Composition. Whether to specify the method to elect the Board.
	$\underline{\textbf{Texas Shootout}}.$ Whether an owner can require the other owners or to buy.	to sell	Job Retention Guidelines. Under what conditions a co-owner must agree to retirement.
	<u>Bring Along.</u> Whether the majority can require minority to sell Company is sold (on same price/terms).	if the	Family Employment Policy. Whether to adopt a family employment policy.
	Come Along . Whether the minority has right to tag along if the Co is sold (right to be included in the sale at the same price/terms as a sthe majority).		Conflict of Interest Policy. Whether to adopt a conflict of interest policy.
	<u>Trigger Price and Terms</u> . The method for determining buy-sell pricerms.	ce and	Strategic Planning Program. Whether to adopt a continuous Strategic Planning Program.
	<u>Heirs</u> . Whether to require heirs, as a condition to receipt of shares, the Buy-Sell Agreement.	to sign	Compensation Policy and Protocol. Compensation Policy
			and Fiolocol.
В	uy-Sell Agreement Funding	$\overline{\mathbf{V}}$	Outside Route Assessment
Eve	ery Buy-Sell Agreement Funding ery Buy-Sell Agreement needs to address funding to be fully , especially when pre-Company sale obligations are considual will address Buy-Sell Agreement Funding as follows:	effec-	_
Eve	ery Buy-Sell Agreement needs to address funding to be fully , especially when pre-Company sale obligations are considered.	effec- dered.	Outside Route Assessment Understanding why our Company would be attractive and to what kind of buyer is key to our positioning. We will address the following Outside Route realities: Best Buyer. We understand there are 5 principal types of successful acquisitions from the buyer's perspective. Key to a successful sale by us to an outside buyer is therefore to determine if our Com-
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THE "GET MY COMPANY READY TO BE SOLD" PROTOCOL



K	ey Asset Protection Plan	Emergency Succession Plan
Asset protection is important both to us as owners and to potential Company buyers. We will address our Key Asset Protection Plan:		If the unexpected happens to our CEO/President, we must be prepared to stay on course. We will address and deploy an Emergency Succession Plan:
	<u>Trademark Protection</u> . Our trademarks and service marks will be protected and registered and will utilize the "TM" or "®" notations.	Disaster Shareholder Resolutions. Corporate resolutions by shareholders naming our revised Board of Directors upon my unexpected death/disability.
	Proprietary Information and Inventions. We will utilize Proprietary Information and Invention Agreements to protect our intellectual property we create. We will confirm our Intellectual Property ownership positioning.	☐ Disaster Board of Director Resolutions. Corporate resolutions electing immediate CEO/President replacement upon an unexpected death/disability of CEO/President.
	Employment Agreements . Employment Agreements will be utilized for key personnel.	 <u>Disaster Notification Letters</u>. Pre-written to our employees, customers, lenders and suppliers to have available for immediate issuance if the unexpected happens to our CEO/ President.
	Non-Compete Agreements. We will utilize Employee Non-Compete Agreements where appropriate and to the degree enforceable.	Disaster Press Release. Pre-written Contingency Press Release to be available for immediate issuance if something
	Non-Solicitation Agreements. We will utilize Employee Non-Solicitation Agreements where appropriate and to the degree enforceable.	unexpected should happen to our CEO/President. Disaster Instruction Letters. Instruction Letters to family, company staff and advisors directing immediate actions to be
	<u>Confidentiality Agreements</u> . We will utilize Confidentiality Agreements with employees and outside partners to adequately protect Company confidential information, business processes and potential trade secrets.	taken upon unexpected death/disability of CEO/President. Stay Bonus. Pre-established Stay Bonus Agreements to deploy to help keep Leadership Team engaged if something happens to CEO/President.
	<u>Patent Protection</u> . We will utilize patent protection when feasible, prudent or advisable. We will confirm our patent ownership positioning.	
K	ey Person Insurance Plan	P&C Insurance Protection Report
im	e recognize the value of our Leadership Team and the financial pact to us and a potential buyer. We will address our Key rson Insurance Plan:	Protection against these risks is necessary to existing owners and potential buyers. We will make sure that our P&C Insurance Protection Report addresses the following (and we will follow the safety recommendations in the Report to minimize risks):
	<u>Key Person Coverage</u> . The Company (and potential Company Buyer) needs to overcome the financial hit upon the unexpected death or disability of key personnel.	□ Liability Risks □ Property & Casualty Risks - Public Liability Fire, Theft, Weather. - D&O Liability Flood and Earthquake.
	Therefore, the Company will make sure it has insurance policies in place and is the beneficiary of the following insurance coverages on the following key personnel:	 Environmental. E&O. Professional. Umbrella.
	Key Person Life Amount Disability Amount \$	- Product Liability. Other Risks - Business Interruption Expatriate Kidnap/Ransom Legal Expenses Pollution Travel Purchase/Warranties. Cyber Security Risks - Cyber Extortion Data Loss Blectronic Crime Data Breach Company Down Time.
	Review of Present Policies. Our Financial Advisor will review our existing insurance policies to advise us which policies should be replaced with better policies based on our current dynamics and based on currently available options and whether the types and amounts of coverage need to be adjusted to address present and expected needs and risks.	Review of Present Policies. Our Insurance Advisor will review our existing insurance policies to advise us which policies should be replaced with better policies based on our current dynamics and based on currently available options and whether the types and amounts of coverage need to be adjusted to address present and expected needs and risks.

McGrath | North

PRE-SALE EXIT PLANNING AND MERGERS, ACQUISITIONS & DIVESTITURES PRACTICES

McGrath North's Pre-Sale/Exit Planning and Mergers, Acquisitions & Divestitures practices represent clients nationwide. Some of the industries we work in include food & beverage, construction, real estate, distribution. human resources, agribusiness, farm & ranch, industrial manufacturing, commodities, commercial manufacturing, retail, services, franchise, security, banking. energy, consumer products, insurance. technology, accounting, healthcare. telecommunications, leasing, education, warehousing, finance, consulting, hospitality and information processing.

We have worked on hundreds of transactions, ranging in size from a few hundred thousand dollars to several billion dollars.

We have advised public companies, private companies, entrepreneurs, family businesses, private

equity groups and others in a myriad of transactions, including mergers, tender offers, initial public offerings, stock and asset purchases and divestitures, joint ventures, ESOP transactions and reorganizations. We have worked on transactions with most of the other "big name" M & A law firms across the country.

The McGrath North Pre-Sale/Exit Planning and M & A teams are recognized regionally and nationally for their experience, high quality service and practical business insight.

These include a top rating from Best Lawyers® in Mergers & Acquisitions Law, and the highest ranking from Chambers USA in the Corporate / Commercial category. Our team members are also individually recognized as Best Lawyers®, Super Lawyers®, BTI Consulting Group Client Service All-Stars and M&A Client Choice Award Winners.

We have worked on transactions in nearly all 50 states.



We have worked on transactions in 6 of the 7 continents.



ATTORNEYS FROM OUR PRE-SALE EXIT PLANNING AND BUSINESS SALE OR PURCHASE TEAMS

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FAMILY BUSINESS LEADERS

Results Not Wanted



Results Wanted



Results Achieved By

Your Family Enterprise Game Plan

Your Family Business Game Plan

What Is The Financial + Personal <u>Cost</u> of Being Too Late or Out of Time?

What Is The Financial + Personal <u>Value</u> of Each Great Play Deployed In Time?

Inspired By Excellence. Committed To Your Success.

When we work with Family Business Leaders, we ask about your story and the story of your Family Business. We get to see the heart and soul of America's Family entrepreneurs, that is, America's new breed of Family Business Pioneers.

We get to see your passion and your excellence. We get to see the grit and determination which drive you. We get to see the love and respect you have for your colleagues and for those you serve. In short, we get to see the pioneer spirit which drives you and your team. Just as it has driven me and our team.

For over 60 years we have been working with our nation's food companies, restaurants, farmers and ranchers to feed people better. We have been working with contractors and companies to build better and more affordable homes and new business facilities.

We have been working with technology companies to develop new ideas that improve lives. We have been working with inventors, startup companies and health care providers to develop patented medical devices, leadership teams and joint ventures that save lives. We have been working with energy companies to help fuel our homes and the businesses we all rely on.

We have been working with bankers, key partners, manufacturers,

distributors, retailers and transportation companies to finance, produce and deliver better products and services to communities around the world. We have been working with Family Business Pioneers and their other Trusted Advisors to transform, grow, carry on and transition the Family Business Dream, the backbone of our great country.

We have been working with our community leaders to improve our cities and our schools. We have been working with our elected leaders to improve the business climate to create and attract new and better jobs for Families.

For over 60 years, this has been the McGrath North Law Firm.

Working quietly behind the scenes closely with the talented leaders of great organizations around the world to make lives better.

Working together. Working stronger. Working faster. Working better. Overcoming Roadblocks. Avoiding Train Wrecks.

Inspired by Excellence. Committed to your Success.

Our diverse team isn't waiting for the future. We are helping to produce new, incredible, sustainable results right now.

We invite you to join us as we move quickly ahead towards the next 60 years.



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www.TheFamilyEnterpriseInitiative.com

Membership Experience with:
Vistage International Family Business Network
Family Business Advisors Alliance
Family Firm Institute Maxwell Leadership
CEO Space International Strategyzer AG
Business Enterprise Institute Secret Knock
Exit Planning Institute

Our Vision (Ultimate Goal)

That every Family and Family Business we serve will build a lasting Family Enterprise of generational wealth, leadership, and legacy.

Our Culture & Code of Conduct

- Tenacity—We never give up on Families.
- Respect—We honor both tradition and innovation.
- Trust

 We earn and safeguard trust in every relationship.
- Enthusiasm—We bring energy and optimism to every challenge.
- Courage—We face difficult issues with clarity and resolve
- Generosity We offer our best ideas and efforts.
- Compassion-We remember that Family is always at the heart

Our Mission (Why, What and How)

We "look into the future" with Family Business Leaders and your Trusted Advisors to discover, decide and deploy what's missing and still needed for you, your family, and your colleagues to achieve the full greatness of the Family Business Dream.

Our Mission Mindset

- "Begin with the end in mind."
- "Start with simple. Only add what's needed."
- "Go for great. Don't wait for perfect."
- "All plans are firm...until changed."

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