

A silhouette of a cowboy on a horse, holding a lasso, set against a sunset sky. The cowboy is wearing a wide-brimmed hat and is riding the horse in a dynamic, forward-leaning posture. The lasso is held in his right hand and extends upwards and to the right. The background is a gradient from light blue at the top to orange and red at the bottom, suggesting a sunset or sunrise. The horse and cowboy are in the foreground, with a dark horizon line at the bottom.

Lassoing the Future: Business Succession Meets Estate Planning

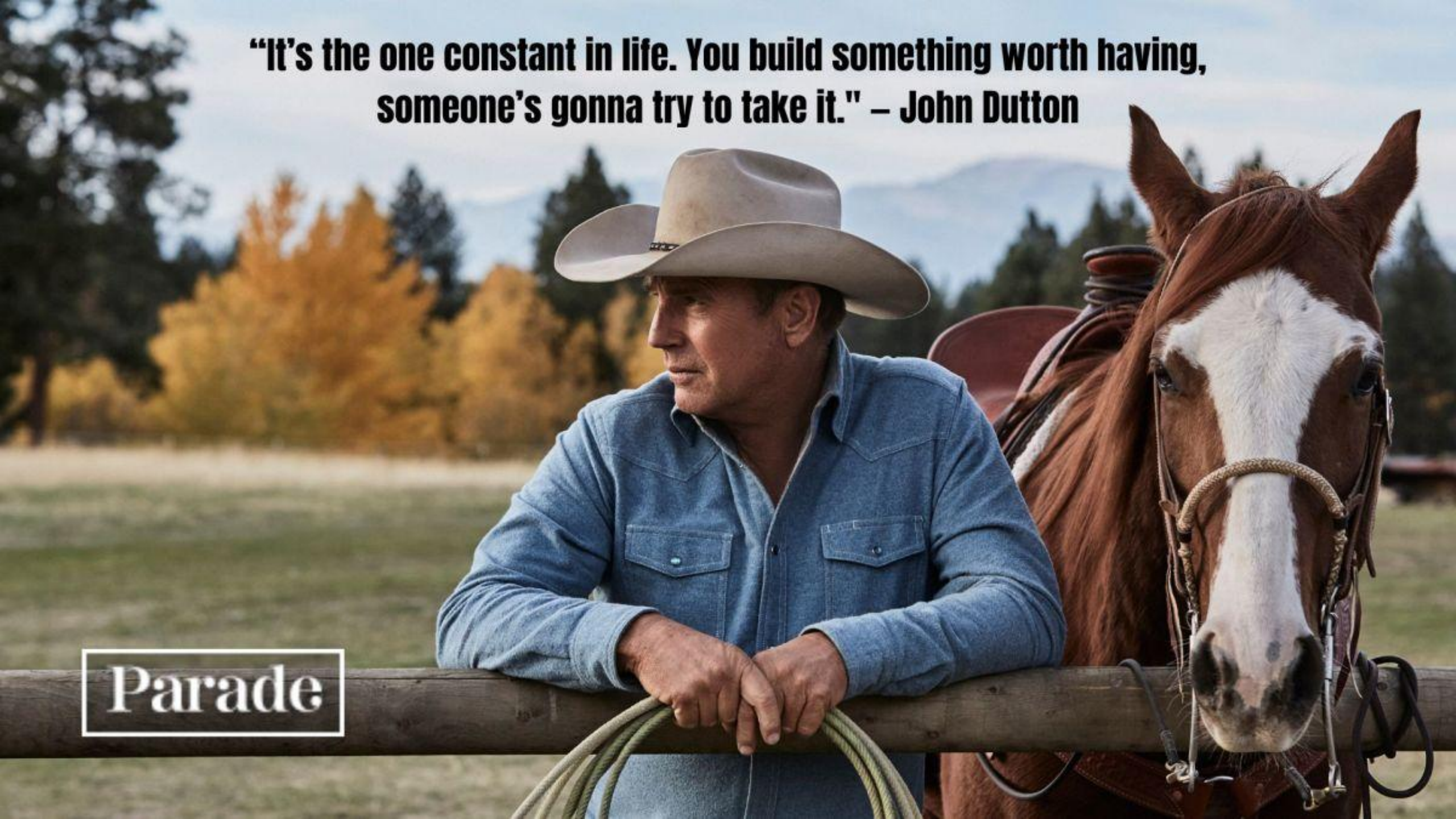
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TXCPA

**"It's the one constant in life. You build something worth having,
someone's gonna try to take it." – John Dutton**

Parade

A man wearing a light-colored cowboy hat and a blue denim shirt is leaning on a wooden fence. He is looking off to the side. Next to him is a brown horse with a white blaze on its face. The background shows a field with trees, some of which have yellow autumn foliage, and mountains in the distance under a clear sky.

Purpose

Focusing on the identification of some potential issues and documentation essential for creating an estate plan and integrating an exit strategy into the business, personal, and financial goals of business owners.



Let Out to Pasture: Data on Business Exits

Uncertainty

- 2/3 of business owners are not familiar with available exit options.
- 75% of business owners regretted selling their business, when surveyed a year after.
 - Identity
 - Drastic change in lifestyle
 - Not clear on what comes next
 - Not certain if they made best deal



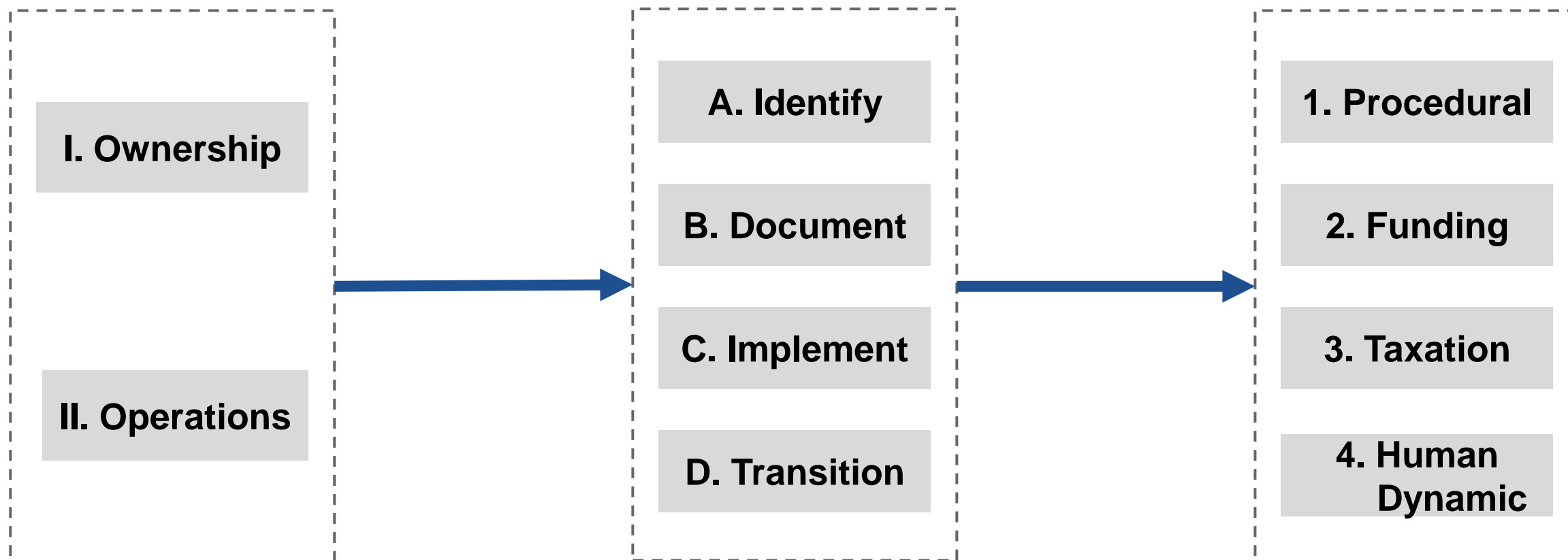
Surviving the Wild West: Data on Business Exits



Against the Odds

- 30% of family-owned businesses survive second generation.
- Succession Planning problems no limited to Family/Closely Held businesses. Study on S&P 1500 woes:
- Loss of business value to owners by 20%-25%
- Overall market loss estimated at \$1 trillion annually

Succession Planning Process



Business Succession Considerations

- Transfer Restrictions
- Buy-Sell Agreement
- Planned Strategic Sale
- Valuation
- Ownership Assignments
- Business Control
- Key-Person Incentives
- Contingency/Successors



Transfer Restrictions



Closely Held Corporations & Family Businesses

- Death
- Divorce
- Disability
- Disagreement
- Dissolution / Bankruptcy of owner
- For Cause
- Drag Along / Tag Along

RECENT UPDATE: Valuation



Connelly v. United States

- Facts: Brothers, Michael and Thomas, co-owned business; used life insurance owned by business to fund the redemption agreement. Michael dies.
- Issue: Does the redemption/buy-sell obligation decrease value of business ownership interest in M's estate?
- Holding: Narrowly - No. Contractual obligation did not diminish value of Michael's shares.

RECENT UPDATE: Valuation

Connelly v. United States

- Why?:
 - Value of Closely Held Corporation must reflect Fair Market Value. 26 CFR Sec. 20.2031-1(b)
 - Life insurance proceeds payable to Corporation are an asset. 26 U.S.C. Sec 2033
 - In summary, it appears the mechanics of the agreement triggered the life insurance inclusion in estate value calculation



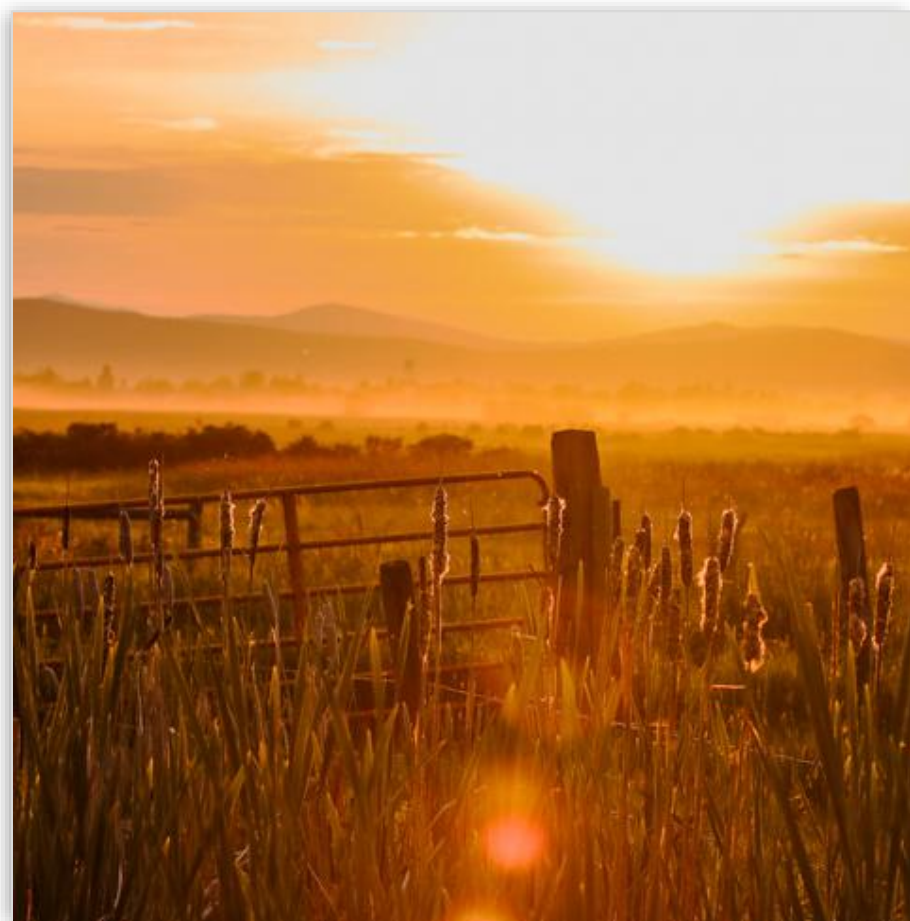
RECENT UPDATE: Valuation

Potential Solutions

- Gross-up life insurance
- Insurance LLC Buy-Sell Arrangement, partnership ownership interests held in business purpose trust
- Multiple Insurance LLC entities.



Ancillary Document Considerations



- Statutory Durable Power of Attorney
- Medical Power of Attorney
- Physician's Directive
- HIPAA
- Guardianship Nominations for Self
- Guardianship Nominations for Minors

Will and Trust Considerations



- Last Will and Testament
 - Testamentary Trust
 - Exercise of Power of Appointments
- Revocable Trust
- Irrevocable Trust
- Philanthropic Intent
- Estate Balancing
- Executor / Trustee Designation

Probate Considerations

- Goal: Transfer Title
- Delay in Timing
- Ancillary Probate
- Muniment of Title
- Potentially Public



Looking Forward: Basis Shifting

- IRS Chief Counsel Margie Rollinson, creation of new Associate Office to focus on partnerships, S-corporations, trusts and estates.
- Targeted Transactions:
 - Transfer of partnership interest to related party: concern about generating tax-free “inside” basis increase to a Transferee.
 - Distribution of property to a related party: concern about distributing partnership high basis property to partner, then arranging a basis increase to remaining assets for tax savings.
 - Liquidation of related partnership or partner: concern about sale of low inside basis asset to high outside basis partner, or high inside basis asset to low outside basis partner.

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THANKS Y'ALL!

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Joshua D. Dietz is an Executive Director, Wealth Strategist at Texas Capital. He works within the Private Wealth Advisors team to provide advice to high-net-worth investors and business owners across all industries.

Prior to joining Texas Capital, Joshua served as Corporate Vice President for The Nautilus Group, and in private practice, providing business succession and estate planning consulting services for high-net-worth individuals, business owners, and corporate executives, among others. He has also served as an adjunct professor, teaching business law and ethics classes at the University of North Texas.

Joshua earned his LL.M. in taxation from Boston University School of Law's Graduate Tax Program, his J.D. from Texas Wesleyan Law School (currently Texas A&M School of Law), and his B.S. from the University of Texas at Arlington. He studied communication in conflict at the Pepperdine University Caruso School of Law Straus Institute.

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