Spotlight
by CeFEO

Why do family business owners leave ownership change so poorly regulated?

A scattered legal market and reluctant owners leave family firms exposed to costly ownership disputes.

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Published on December 28, 2023

A family business can survive bad years, tough competitors, even the loss of its biggest customer. What it often cannot survive is a death, a divorce, or a quiet falling-out between owners who never agreed what should happen next. Those are precisely the events most owners leave unplanned.

The numbers are blunt. The 2019 STEP report found that 70% of family business owners have no succession plan and 53% have no emergency plan for unexpected events. PwC's 2023 US survey put 66% with no succession plan in place and 73% with no prenuptial agreement — this despite 78% of the same owners calling protection of the business a top priority. The legal tools to close these gaps already exist. Owners just don't reach for them.

So why not? That is the question Kajsa Haag, Hanna Almlöf, Marina B. Madsen and Mette Neville set out to answer. Their explanation is uncomfortable, because it doesn't rest on owners being careless. It rests on a market that makes doing the right thing expensive, confusing, and emotionally costly.

WHAT WE STUDIED

The team worked inductively, letting the explanation emerge from the field rather than testing a theory chosen in advance. They conducted 30 in-depth interviews with legal advisors across Sweden and Denmark, 9 in-depth interviews with owners of small and medium-sized family firms, and a survey of 105 family business owners. Advisors revealed the supply side of the market for legal advice; owners revealed the demand side.

Coding followed the Gioia method, moving from roughly 50 raw codes to 28 first-order concepts, then to seven second-order themes, and finally to two aggregate dimensions. Transaction cost economics entered the analysis partway through, once the team saw that the patterns in their data mirrored the costs of contracting — Nooteboom's "three Cs" of contact, contract, and control.

The conceptual move at the heart of the paper is the **ownership contract**: the full set of formal and informal arrangements that govern the relationship between co-owners. It includes the shareholders' agreement and the articles of association, but also marital agreements, testaments, and even the unwritten understandings embedded in a family's culture. Regulating it properly means crossing two legal worlds — business law and family law — that, in both Sweden and Denmark, rarely sit at the same table.

KEY INSIGHTS

Four instruments, two worlds, almost no one who covers both

Controlling ownership change takes four complementary instruments: articles of association and shareholders' agreements on the business-law side, marital agreements and testaments on the family-law side. The problem is that advisors specialise in one side or the other. The authors call them compartmentalised content experts. A business lawyer drafts the shareholders' agreement and stops there; the marital agreement and the will — equally important to the family — fall outside the brief.

This collides head-on with what families actually want. In the MassMutual survey, 86% wanted their advisor to

handle both personal and business planning, and 70% preferred to work with a single advisor for everything. The market is structurally incapable of supplying the one thing customers most want.

Prestige widens the gap. Business law carries higher status and higher fees than family law, so business specialists have little appetite for the "messy" private matters of divorce and inheritance. One Swedish wrinkle makes it worse: a ruling by the Inspectorate of Auditors bars lawyers in accounting firms from giving family-law advice at all. Accountants are among the most trusted advisors families have, which makes this restriction genuinely counterproductive — it blocks the one advisor many owners listen to from raising the issues that matter most.

Even where coordination could fix this, it doesn't happen. Advisors work on what the authors call bounded assignments: a defined task, with no expectation that they look beyond it or hand the client on to a complementary specialist. The shareholders' agreement gets written. Whether the matching marital agreement is ever signed is, as one advisor admitted, simply not their job to check. The result is a scattered market, and the cost of stitching it back together lands on the owner.

Owners who can't tell complete advice from partial advice

On the demand side, owners are what the authors call uninformed customers. Many have heard they "should have a shareholders' agreement" without knowing what it does or what else they need. That information asymmetry means they cannot judge whether the advice they receive is complete or covers only half the picture. In the survey, 85% of owners said they had a shareholders' agreement — but around a quarter had drafted it with no advisor at all, and the quality of the rest is unknown. Some co-owners couldn't even say where their agreement came from or who wrote it.

Then there is present biasedness: the very human reluctance to pay now for protection against something that might never happen. Fees to prevent a hypothetical future conflict feel like money spent on nothing.

You don't see the value of it, until you are in deep shit. (Owner #8)

The cost nobody puts on an invoice

The most original part of the paper is its attention to emotional strain — a nonpecuniary cost that prior work on ownership regulation has largely ignored. Marital agreements and testaments force people to talk about divorce and death. Raising them can feel like an accusation. The survey makes the avoidance visible: more than 70% of owners had discussed decision-making power and veto rights before becoming co-owners, but only 28% had addressed what happens if a co-owner dies, and only 44% had touched on divorce — even though at least one co-owner was married in 95% of cases.

This is the finding advisors should sit with longest. The barrier to sound regulation is often not money or ignorance but discomfort. Owners who hold a clause requiring shares to be kept as separate property frequently never follow through, because asking a spouse to sign a marital agreement feels, in one owner's words, like announcing you want a divorce. Roughly 29% of owners didn't even know whether their agreement contained such a clause.

TAKEAWAYS FOR FAMILY BUSINESS OWNERS AND ADVISORS

The practical message is that ownership regulation fails for structural reasons, not personal ones — which means it can be designed around.

- Treat the shareholders' agreement as the start, not the finish. It is one of four instruments, and on its own it leaves the family-law side of your ownership exposed.
- Assume your advisor's brief is narrow. Ask explicitly who is covering marital agreements and testaments, and who is checking that they actually get signed.
- Expect the emotional conversations to be the hard part, and plan for them deliberately rather than letting them quietly slide off the agenda.
- If you have a clause requiring shares to be separate property, verify that every co-owner has actually executed the marital agreement. Trust is not follow-up.

- For advisors: the gap in the market is coordination. Whoever can convene business-law and family-law expertise around one family's needs is offering something most competitors structurally cannot.

IMPACT

Read together, the supply-side and demand-side failures reinforce each other into what the authors are willing to call market failure. A scattered market raises the cost of getting complete advice; uninformed, present-biased, emotionally reluctant customers raise the cost of acting on it. Owners respond by dodging the small ex ante costs of regulation and exposing themselves to potentially ruinous ex post costs — deadlock, forced buy-outs, litigation, or the loss of the business when an owner dies or divorces.

Theoretically, the paper carries transaction cost economics into new territory for family business research, which has mostly used the theory for asset specificity rather than the costs of contracting. The ownership contract gives the field a way to talk about the formal and informal regulation of owner relationships as a single, inevitably incomplete object. The authors also push toward policy: if the market cannot serve family businesses, lawmakers could adapt the default rules of company law to fit them, lowering the cost of getting it right in the first place.

RECOMMENDATIONS

1. Map all four instruments for your ownership group — articles of association, shareholders' agreement, marital agreements, and testaments — and identify which are missing.
2. Commission the family-law instruments alongside the business-law ones, rather than assuming the shareholders' agreement is sufficient on its own.
3. Name a coordinating advisor, or ask a trusted process advisor to oversee the whole picture and connect the specialists involved.
4. Schedule the sensitive conversations — death, divorce, exit — as a normal part of ownership planning, ideally before tension makes them harder.
5. Revisit existing agreements whenever the ownership group changes, so that inherited or reused contracts still fit the current owners.
6. Policymakers and advisory bodies should put accessible guidance on ownership regulation where owners already look for information, and revisit rules that stop trusted advisors from giving holistic advice.

Spotlight by CeFEO, *Why do family business owners leave ownership change so poorly regulated?* A scattered legal market and reluctant owners leave family firms exposed to costly ownership disputes.. Downloaded on 1 June 2026 from https://spotlight.cefeo.se

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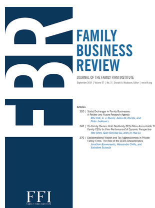
PUBLISHED IN



Haag, K., Almlöf, H., Madsen, M. B., & Neville, M. (2024). Legal advisors and family business owners: A transaction cost understanding of "the ownership contract". Family Business Review, 37(2), 292–314. https://doi.org/10.1177/08944865231217882

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Spotlight is an online magazine that translates research from the Centre for Family Entrepreneurship and Ownership (CeFEO) at Jönköping International Business School, Jönköping University, into accessible insights for family business owners, practitioners, and policymakers.

Spotlight is supported by the WIFU Foundation. This partnership advances dialogue and education in responsible family entrepreneurship and ownership.