

Transition Agreements

You've spent years developing the idea, all-nighters and weekends building the business. You've courted investors and customers. You could never leave your company. Or could you?

Maybe you put the company on a solid foundation, but now it's time to turn to that new idea you've been developing on the side. Maybe your company had a down round or you have new investors, and they want to go in a different direction. Maybe it's time for a professional executive to take the company to the next level. Or maybe, it's just time for both you and your company to go your own ways.

Ideally, founder transitions are amicable, respectful, and thoughtful. Often, they are fraught, emotional, and hasty. Regardless of the circumstances, you and the company should promptly put in place an agreement to manage your relationship and to control the terms of your exit. The name of that agreement is a transition agreement.

Transition agreements address the following key obligations of the company and the founder as the company seeks new leadership:

Separation Date: Like a separation agreement, transition agreements define the period of time that the founder will continue in his or her current role. Usually, the founder will continue as an executive and receive a salary until a predetermined separation date.

Services: A smooth transition is important to the company and its investors. The founder's assistance in identifying and training new executives, communicating with investors, and remaining a positive character in the company's story are important objectives for the company and provide meaningful negotiating leverage to the founder.

Equity: Transition agreements often provide for ongoing and accelerated vesting of equity, extensions of option exercise dates, secondary sales, and other equity related provisions.

Future Role: It is common for a founder to remain on the board as a director or to provide services as a consultant after the separation date.

Communications Plan: The messaging of your transition to employees and the industry is important to both you and the company. Transition agreements often include detailed communications plans and agreed upon press releases and other public statements.

Timing is critical in transition agreements. While it may seem like the best course of action is to be a team player, to help identify your successor, and to leave the details of your departure for later, your influence and leverage at the company will wane with every passing day. Setting the terms of your transition early is important to achieving a good outcome.

Finally, founders should not rely on handshake deals. Circumstances and attitudes evolve and can change wildly over the course of a transition. A clear understanding at the beginning of the process may not be so clear by the end. Always remember that company counsel represents the company, and investors represent their funds. You should consult with your own legal counsel when facing a transition event.

Patterson Belknap has a multi-disciplinary team of lawyers who are focused on the legal needs of founders and entrepreneurs. A description of the full range of our services and attorney contacts can be found [here](#). Please visit the [Founder Focus Resource Center](#) for more content on a broad range of topics of interest to founders and their professional advisors.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact the following attorney or call your regular Patterson contact.

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