



Transfer of Ownership = Succession Planning = Long-Range Planning

**A White Paper Prepared by the Industry Relations Committees (2016-2017) of the IAFE:
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Introduction

Fairs, concessionaires, and vendors are business partners in an ever changing and challenging business environment. The long list of external factors that impact our business and that are out of our control continues to grow. Whether weather, government regulations, the demands of a changing society or the expectations and demands of the fair customer, it is critical that we pay attention to the areas we do control. One important segment is the business continuity and/or ***transfer of ownership*** policies that ensure a viable future for our concession and vendor partners.


Transfer of ownership needs to be viewed in the same realm as succession planning and long-range planning.

Organizational survival in a globally competitive environment depends in part on having identified and developed replacements (i.e., successors) for key positions.¹ This is the essence of succession planning according to David D. Day in SHRM Foundation's *Developing Leadership Talent*. In business, succession planning entails developing people with the potential to fill key business leadership positions in the company. The company may be a fair, industry trade organization, food and beverage concession company, supplier vendor, retail exhibit owner, ride owner, carnival owner, etc. Succession planning and transfer of ownership are considered to be sound business practices.

Fairs, concessionaires and vendors very often share the tradition of "deep family ties" either through ownership or involvement. All of us are asking "Who

For the purposes of this article, the following definitions are provided:

- 1) **Concessionaire** = a food sales operation (mobile or fixed structure)
- 2) **Mobile Concessionaire** = mobile food sales operation that travels to multiple events
- 3) **Tenant/Fixed Structure Concessionaire** = food sales operation located in a fixed structure on the property. The fixed structure may be one of the following:
 - a) leased for a short period from the property for the purpose of operating the food concession
 - b) the structure is owned by the food concessionaire but the land belongs to the property
- 4) **Vendor** = nonfood sales operation (indoor or outdoor)
- 5) **Straight Sales** = exchange of money is based on flat space rates
- 6) **Percentage Sales** = exchange of money is based on a % of total gross sales or net sales



will be running the show in the future?” While the term commercial concession covers a variety of business segments, this paper will focus more on food concessions than other sectors.

To the millions of fair guests attending their favorite event each year the concessionaire is an important part of the fair’s business. They walk to a location where they believe they will enjoy eating their favorite fair food. When it is gone, they deserve to know where it was moved. If it was sold they expect to have the same or better quality item and service. Planning for changes in ownership helps fairs and owners make these transitions for the fair guest in a seamless manner.

For a variety of reasons, many of which are discussed in this paper, fairs and concessionaire/vendor company owners with agreements to operate at a specific fair event have experienced challenges in holding the conversation about changes in ownership. The issues may be trust vs. fear, control vs. powerlessness, and opinions that involve a “hard yes” and/or a “hard no” rather than flexibility. The expectations of the guests need to be added to the conversation.

Communication is the first step. This paper will bring forward questions and situations, as well as provide examples of what fairs are doing. But agreeing to transparent communication is paramount. Discussions should happen without fear of recourse from the event and in full transparency outlining the succession plan of the business owner. Honest conversation that takes into consideration the best interests of the fair, the concessionaire **and** the fair guests is the top priority.

This report provides definitions, a thoughtful overview of concerns, questions to ask, expectations of fair management and buyers, ideas that have been used in some common transactions, and samples of written approaches and solutions. It is a compilation of known resources and recent articles in the National Independent Concessionaires Association’s trade magazine, NICA News, as well as work produced by the IAFE’s Commercial Exhibit and Concessions Committee. The goal is to be well prepared to successfully change and grow future fair events without undue disruption for the stakeholders.

Key Considerations

- 1) For many fairs, FOOD is the #1 reason that fair-goers attend. It is critical that the quality and variety of food offerings remain consistent and revenues continue to grow.
- 2) Poorly written or nonexistent transfer of ownership policies could lead to declines in revenue and product offerings.
- 3) It is important to lay out solid policies that protect the fair and give concession operators the opportunity to have a sellable asset even though many contracts are one year contracts.
- 4) It is imperative that there are transparent and positive conversations as well as mutually beneficial transfer of ownership policies.
- 5) What if the best fairs no longer have a waiting list for concessionaires? What if young people choose to not get involved and aren’t interested in continuing the family business or even becoming involved in the Fair business as a new entrepreneurial concessionaire?

What Is Transfer of Ownership?

The term “transfer of ownership” has entered the lexicon of the fair sector, but it is in fact, a very complicated process with legal considerations. When a concessionaire transfers ownership of the concession business, **one** agreement or contract is created. The only parties to that agreement are the selling (transferring) concessionaire and the new (acquiring) concessionaire. The fairs the concessionaire plays are not parties to that contract or agreement. The fairs are not bound by its terms in any way. The terms of the agreement or contract the transferring concessionaire has with **each** fair he or she plays is a completely separate agreement. Only the transferring concessionaire and the respective fair can change the terms of each agreement. The acquiring concessionaire will need to enter into a new contract with each fair — it is a very rare situation in which the transferring concessionaire can assign his or her fair contract. One contract cannot change the other.

However, all parties need to understand and be transparent in their discussions about the elements of each contract. The table below outlines these elements.

Subject of Transaction <i>Elements of the transfer</i>	Transfer of Ownership <i>To be addressed in transfer ownership agreement between buyer & seller</i>	Concession Contract w/Fair <i>Elements likely impacted in separate agreements between concessionaire and each fair</i>
Equipment	Complete list; warranty of serviceability; transfer of existing warranties, equipment free of liens, etc.	Infrastructure needs (electric, sewer, water, gas), signage, height and space requirements
Inventory	Product and materials on hand at time of sale such as paper goods and food/beverage products; inventory is of merchantable condition and quality	Fair may have exclusive agreements with certain purveyors (i.e. beverages, meat, etc.) as well as mandatory use of branded cups
Debt	Is transferring concessionaire financing, are there operating loans secured by inventory; is agreement contingent on obtaining financing; etc.	Not a part of this contract unless a deposit with the fair is involved
Supplier pricing contracts	The seller may have negotiated a contract with supplier which can be transferred or assigned	Fair may have exclusive agreements with certain purveyors (i.e. beverages, meat, etc.)
Representations	Qualified to do business in locations where concession plays; all disclosures of financial condition are true and correct according to GAAP; no pending or threatened litigation against transferring concessionaire relating to the business; all existing contracts with fairs are attached as an exhibit to this contract with a statement as to status and enforceability	Not a part of this contract
Due diligence	Acquiring concessionaire given access to all documents and records necessary to understand all matters relating to the business to be transferred	Fair notified of possible transfer and have opportunity to evaluate acquiring concessionaire
Transferring concessionaire's exit	Transferring concessionaire's commitment to help business, agreement not to compete, etc.	Not a part of this contract

Most concessionaire and vendor contracts issued by fairs are done on an annual basis, with no guarantees of future contracts. It would be rare that such a contract could be “assignable,” meaning the concessionaire cannot sell, give away, or transfer the guaranteed right to participate in a future event (*see NOTE below*). In other words, a concessionaire cannot in most instances “sell” a route of locations as part of the transfer of ownership to a buyer.

NOTE: unique situations exist on certain fairgrounds where there may be permanent structures operated by a concessionaire. Each instance of a transfer of ownership would be unique and the respective parties should review all existing contracts and agreements as part of the consideration process.

WHY — Why Do Transfers of Ownership Happen?

- 1) Long time owners retire
- 2) Succession planning
- 3) Owners want to reduce the scale of their business
- 4) Product doesn't work in local area
- 5) Debt
- 6) Perception (not what they thought it would be like)
- 7) Illness, death in the family, medical issues
- 8) Not making any money
- 9) Not being accepted or licensed at a Fair/Exhibition

TYPES — Types of Transfers

- 1) **Owner to NEW Owner** (*business owners don't know each other, established concessionaire selling to someone new who wants to get into the business or is already in the business but wants to grow*) This type of transfer of ownership does cause some concern with all parties involved. Will the operation perform (revenue performance and capacity) to the same level as it has in the past? Will their business practices be the same?

- 2) **Owner to Owner Friends** (*two owners who are friends or know each other well*) This type of transfer tends to be a little less concerning as both parties are typically already in the Fair/Exhibition business. If the fair manager knows both vendors very well, this transfer tends to be greeted favorably and can be done easily and accommodated.
- 3) **Owner to Owner Family** (*family member sells to another family member [parent to son/daughter, brother to brother, cousins, etc.]*) Again, this situation is an easy decision. Typically the family member has already been involved in the operation (in one form or another), has grown up in the business and is ready to branch out, and is trusted.

ASK — Questions To Ask When Dealing With a Transfer of Ownership Situation

- 1) Who are you selling to? Who will be the new owner?
- 2) Do you know them? Does the Fair/Exhibition know the new owner? Does the seller know the buyer? Relationship?
- 3) Condition of the sale? (Will the owner stay on to manage/help manage for one year, etc.?)
- 4) Are you buying a company or a booth? What are you transferring (*refer to table above*)?
- 5) Timeline of sale, when is it happening? (can cause concerns)
- 6) References of the new buyer/owner
- 7) License/contract details

FACTORS — Selection Factors From Fair Management Perspective

Four key licensing/contracting concerns when confirming/transferring space:

- 1) The product line (conflicts and saturation)
- 2) The booth display (presentation)

- 3) The owner (the people), who they are, their business practices, interaction with office staff
- 4) The company as a whole (business practices)

If any of these things change, then the Fair management has valid concerns for the continuity of the business and its operation at that event.

RISKS — Risks/Concerns

There are a number of risks and concerns which should be addressed during discussions between the fair and both the seller and buyer.

- 1) The new buyer not maintaining the expected standards (See “Six Principles of Booth Design,” May/June 2014 *Fairs & Expos*)
- 2) The new buyer (or the seller) requesting multi-year license agreements/contracts
- 3) The seller trying to sell space or routes
- 4) New owner backing out of the deal or the event at last minute
- 5) Timing of the sale — too close to fair time, during the fair; when they happen determines the accountability of each party (fair and new owner)
- 6) Outstanding issues the fair may have with seller and/or buyer (unpaid bills and utilities)
- 7) Questionable business practices and history of either seller or buyer
- 8) Bad references of the buyer
- 9) Owner to owner (Flip) — a vendor sells his unit to a “NEW” owner, fair is aware, expecting the same unit to show up at Fair time, but at last minute the “new” owner brings in his/her other new trailer into the space, essentially buying the space, not the concession stand

NEXT STEPS — Moving Forward

- 1) Most transfers of ownership will take years to generate a significant return on the investment for the new buyer. Therefore transparency and thorough review of all aspects of the process are of the essence for all parties. In addition, fairs might consider:
 - * Creating or adding to the published policies and procedures for the activity of concessionaires and commercial exhibits which address the expected standards and criteria of operation
 - * Creation of procedures for multi-year contracts predicated upon improvements to equipment, and/or trial periods in which a previous owner commits to an on-going role in the business for a specified period of time
 - * Establishment of performance criteria
- 2) It is reasonable to expect that any Transfer of Ownership will be predicated on whether fair management is willing to allow the business to continue at that property during the annual event. If allowed to move forward, the event will want assurances that there will be continuity in the performance of contracts and delivery of goods. Potential changes in processes, menus, staffing, or major equipment will be extremely important to an event’s decision-making and any plans to alter these should be disclosed prior to receiving any assurances from the show. Unexpected changes to an operation could cause any agreements made by the event to become null and void.
- 3) New buyers should thoroughly review and understand fair management policies and procedures, including annual evaluation and contract/ deposit periods before entering into an agreement with the seller.

Proactively addressing this issue will require fairs and events to set clear expectations and have defined processes for the smooth transition of business ownership amongst its vendors and concessionaires. Ultimately, the common denominator for success is about building relationships and transparent communications among all parties throughout the process.

Considerations in Developing a Transfer of Ownership Policy

Your answers to these questions will provide a guide to your next steps. You may have enough information to easily develop your policy; however, you may have also found that your procedures related to concessions and contracts need some work before a policy can be developed.

Please describe: _____

1. Does your fair have a policy and/or procedures in place to address transfer of ownership?

← **YES**

2. Are your food contracts one year?

YES

NO → How many years? _____

3. Who makes the decision on contract renewals and who has oversight on selection?
 Board Volunteer Committee
 Staff Governmental Agency

Please share criteria: _____

4. Are there written criteria explaining what is important to your fair? i.e. variety, # of food with no regard to variety, tents vs. mobile trailers

How do you make the decisions? _____

← **YES**

NO →

5. Does your contract spell out that it is a contract for operation not a guarantee of location?

YES

NO → Do you typically move your vendors frequently?
 Yes No

Please share criteria: _____

6. Does your fair have a policy that limits the number of concessions (locations) that can be owned by any one person?

How do you make the decisions? _____

← **YES**

NO →

7. How has your fair dealt with someone who wanted to sell their stand?

When do you renew the contracts? _____

8. Does your fair typically have repeat food concession vendors?

← **YES**

NO → Do you have a shortage?
 Yes No

9. Do you have applications for food vendors that want space but you can't provide the space?

← **YES**

How do you recruit? _____

Approximately how many? _____

10. Does your facility have permanent food stands?

← **YES**

How many and who owns the structure? _____

11. Are contracts for permanent food stands different than those for mobile food concessionaires?

Examples of Solutions

A resource section can be found online in the IAFE library in the “Transfer of Ownership” category. Following are examples of Transfer of Ownership approaches.

Dutchess County Agricultural Society (NY)

The Dutchess County Agricultural Society, Inc. (DCAS) recognizes the contribution our concessions and vendors make to the success of the Dutchess County Fair.

We also recognize that they are not traditional “brick and mortar” businesses and as they look to transition their business to new owners, the location of their operation at our Fair is key to the value of their business.

The policy of the DCAS for the transition of business ownership to new owners is as follows:

- The prospective owner must fill out a DCAS Fair application, including references and submit this prior to taking ownership.
- After the references are checked and the prospect is approved, DCAS will offer the location to the new owner for 1 year, with the understanding that product quality remains at or above the existing standard and income produced from the booth also remains at or above the existing level.
- Any concession or vendor not abiding by this policy in transferring their business may lose their location(s).

Why this is good for . . .

Vendors	Buyers	Fairgrounds
Gives the vendor a route in addition to their equipment sale adding value to their business sale	The buyer is not just buying equipment, but also a route, adding value when seeking funding	The Fairgrounds can maintain control over its stellar line up of concessions and vendors

After the references are checked and the prospect is approved, DCAS will offer the location to the new owner for 1 year, with the understanding that product quality remains at or above the existing standard and income produced from the booth also remains at or above the existing level.

Examples of Solutions

State Fair of West Virginia

Procedure Regarding Proposed Sale of Mobile Unit:

- A. Concessionaire shall notify the SFWV, in writing, of any pending or proposed sale of the Mobile Unit to another party. Such notice shall include the proposed purchaser's name, address and telephone number. Any such notice must be provided to the SFWV by not later than January 1 prior to the next Fair.
- B. The proposed purchaser shall submit to the SFWV a resume stating the proposed purchaser's food and beverage operations experience and at least three (3) references (including but not limited to employers) from the food and beverage industry;
- C. The proposed purchaser shall submit to the SFWV additional business references including at least three (3) food and/or beverage suppliers and one (1) financial institution.
- D. The proposed purchaser shall provide to the SFWV personal and/or business financial statements for the previous two (2) years, as are required by the SFWV.
- E. The proposed purchaser shall submit to the SFWV a detailed plan for the operation of the Mobile Unit which is proposed to be sold, including but not limited to the concept, menu (complete listing of food, beverage and/or other items), signage, entertainment, renovations, improvements and/or construction.
- F. The proposed purchaser shall submit to the SFWV, along with the documents stated above, a Mobile Food Concession Agreement, signed only by the proposed purchaser, evidencing that the proposed purchaser agrees to comply with the terms of the Mobile Food Concession Agreement if the proposed purchaser is approved by the SFWV to conduct operations at the Fair for the upcoming year.
- G. The SFWV shall advise Concessionaire and the proposed purchaser of its decision regarding the above-referenced application in writing and within sixty (60) days of delivery of all required documents to SFWV. Upon the approval of the proposed purchaser for operation of the Mobile Unit by the SFWV, Concessionaire and the proposed purchaser must complete the transaction within thirty (30) calendar days of the date of such approval unless Concessionaire, the proposed purchaser and the SFWV mutually agree, in writing, to an additional time period which shall be stated in such written extension agreement. Any such transaction must be closed by not later than March 31. Concessionaire and the proposed purchaser shall immediately notify the SFWV, in writing, upon the completion of the closing of the transaction. Upon receipt of such notification, the SFWV shall execute the Mobile Food Concession Agreement (previously signed by the proposed purchaser) and provide a copy of the fully signed Agreement to the new owner of the Mobile Unit.
- H. In the event the closing of the sale of the Mobile Unit is not completed as provided in Section #23, G above, Concessionaire shall perform all obligations under the terms of this Agreement for the upcoming Fair.
- I. The failure of the Concessionaire to comply with the requirements of Section #23, A-H above, including but not limited to failing to notify the SFWV, in writing of a proposed change of ownership of the Mobile Unit or the closing of the sale of the Mobile Unit without complying with the above requirements and obtaining the necessary approvals, shall constitute a breach of this Agreement. Upon such breach, this Agreement shall be immediately and automatically terminated and neither Concessionaire nor the purchaser of the Mobile Unit shall have the right to operate the Mobile Unit at the SFWV during the upcoming Fair. Further, Concessionaire will be subject to the liquidated damages provision of this Agreement set forth in Section 25 hereinafter.

Examples of Solutions

Washington State Fair

Food Concession Transfer/Sale Policy

In the event there is a compelling need to transfer and/or add persons to the interest in a company contracted to provide concessionaire services, the following policies have been developed to ensure smooth and stable transition of ownership or interest in a business operating at the Washington State Fair.

1. The Washington State Fair has established by past policy and practice that the “goodwill” (location) of a food/exhibit/merchandise concession on the fairgrounds belongs to the fair and cannot be sold by the concessionaire to another individual or company. Family members however are allowed to transfer acquired interest from other family members upon approval by the Washington State Fair. Concessionaires contracted to use specific locations in permanent buildings do not own the buildings or the fixtures permanently attached i.e. hood systems, fire suppression systems, sinks, and other permanently installed plumbing and electrical systems, but are licensed to use the facility for the term of the contract.
2. The Washington State Fair policy is that each concessionaire is invited to enter into a one year contract for a specific location to sell specific products. In reality, the fair typically chooses to issue these contracts automatically to those concessionaires that have adhered to the rules and regulations and fulfilled their contractual obligations.
3. In the event a concessionaire chooses not to operate in the future, the concessionaire notifies the Fair of their decision. The Fair has the sole decision on selecting subsequent occupants of the facility or location. The concessionaire ceasing business may approach a “new”

concessionaire selected by the fair to see if the “new” concessionaire is interested in purchasing the equipment only. However, if the “new” concessionaire is not interested in purchasing the equipment, the concessionaire must remove the equipment from the fairgrounds.

4. In the event that an existing concessionaire wishes to enter into a partnership agreement or transfer ownership to another party, that transaction and new partner/owner must be approved by the Board of Directors of the Washington State Fair. The following criteria shall apply.

Determination of Value and Details of Fair Vendor Ownership Transfer/Sale:

- a) Equipment shall be appraised by an Independent Appraiser to determine value. The Independent Appraisers detailed/certified valuation shall be shared by all parties and a copy provided to the Washington State Fair.

Equipment that is built-in to the fair-ground’s permanent facilities. i.e.: hoods, fire suppression systems, plumbing fixtures, etc. are owned by the Washington State Fair and therefore has no monetary value.

Portable or mobile units shall be appraised by an independent appraiser to establish the value of equipment only. Location shall not be a factor, nor is location at the Washington State Fair guaranteed.

- b) Full disclosure of terms of the agreement to transfer ownership or partnership agreement. Including all financial arrangements.
- c) Disclosure of plans and timelines by the new partner/owner for any facility improvements.

Examples of Solutions

Montgomery County Agricultural Fairgrounds

Policy and Procedures Manual Concession and Vendor Business Transfer Policy P & P Discussion 2016

The land at the Montgomery County Agricultural Fairgrounds that is designated as Concessionaire or Vendor space during the annual Fair, is owned and controlled by the Montgomery County Agricultural Center Inc. Concessionaires and Vendors do not have the authority to sell, trade, assign or transfer the right to use any space on the Montgomery County Fairgrounds.

A Concessionaire or Vendor who wishes to use a space on the Fairgrounds that has continuously been used by a previous owner of a business, may do so under the following conditions:

1. Contact the Fair Office and complete the required application.
2. Use of the space will be permitted for one (1) year with the expectation that product quality remains at or above the existing standard
3. Annual extensions for the use of the space will be granted as determined by Fair management.

Concessionaires or Vendors that do not abide by this policy when selling or transferring ownership of their business, may lose the location(s) that they have historically occupied. The Montgomery County Agricultural Center recognizes the contribution our concessionaires and vendors make to the success of the Fair. We will support an orderly transition when business ownership changes by working with new owners as much as possible.

Footnotes

1. Rothwell, W.J. (2005). *Effective succession planning: Ensuring leadership continuity and building talent from within* (3rd ed.). New York: American Management Association

The following were referenced in creating this white paper and can be found in the IAFE Library:

- * "The Transfer of Ownership" by Jeff Thornberry, Pristine Systems, *NICA News*, December 2016
- * "Transferring Ownership" by Deb Aschmann, Fairs & Events Consulting, *NICA News*, May 2016
- * "What is Transfer of Ownership?" by James Radke, Calgary Stampede, for 2016 IAFE Commercial Exhibits & Concessions Committee



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