LEGACY LAW

Protecting the assets in your family tree

If you want a successful family team to continue, what changes in approach do you need?

"If you can't change the people, change the people" – Gilbert Enoka, Manager for Leadership with the All Blacks

There are plenty of sporting analogies used in business but they are usually addressed to the management and senior employees. Standard MBA approaches consistently and predictably fail with families who share an ownership interest in a business.

A beneficiary of a trust or a family member who is not paid market rates for what they contribute (whether it be over-paid or, worse, under-paid) will not be motivated to perform the way a CEO in non-family business will. So, the first change in approach is not to expect them to act that way and replace expectations with a genuine plan built upon an open and honest discussion about what people want. Then, change KPIs or unspoken assumptions with an observable commitment to work together and deliver on what was agreed. This is not easily achieved so requires an increased input of energy and time.

We prefer to act for the owners of businesses – often a family personally or through a discretionary family trust. This required us to work on our mindset and skills. We are not asking you to do anything we have not done.

As we said in a recent article, to build a functioning family team that has esprit de corps, you need:

1. Buy-in; family members other than the patriarch and matriarch need to be seriously engaged for this to work as they will be asked to "live in the plan" – this was looked at in more depth in this article;

2. Change approach; otherwise you get the same results as you have now and your legacy is still no closer to actually happening the way you want – we look at this below; and

3. Resources; as you know from life, you need support to do anything novel and results are quicker when you have the right coach – we will look at this in a later article.

We the people are the key to any structure. We can make it hum successfully or make it fail. The All Blacks performance coach, Gilbert Enoka, said that in terms of high performance, skillset and mindset are assumed. Structure is the key to keeping numerous high performers functioning well together so that they share the rewards.

Without structure, which he defines as the routines and rituals, the whole structure can fall down. His reason was because the other two elements of skillset and mindset can be worked on separately, structure is there to reduce the risk of many moving parts over-relying on the key part and the risk of the weakest link compromising the entire structure.

The good news for you is that yours truly, and hopefully your trusted inter-generational lawyer, are good with structures. The less good news is that it is probably you who needs to grapple with mindset and honestly assess the skillsets of your players. After all, you have to play "the game" with them as your team. That said, our experience in expanding our skillsets for us to better serve families and our exposure to high-functioning families is available to you.

The reality is that the structures have usually been set up a long time ago based on professional advice and no real discussion about what might serve the family. We most often see that the family are not totally aware of the structure or the reason for it. That should change! We see that advisers can be defensive about the structure they set up. However, if you are about to put a lot of effort (and it will take that so it is not for everyone) into a structure, shouldn't you test that it can endure? We do not ask too much of old computers or cars. A more modern structure may be a better foundation and CGT rollover reliefs may be available to you.

What got us here will not get us somewhere new. Most of us start life trying to establish ourselves in the world. Until we have kids, it is all about us. Inter-generational transition involves new players and new needs and perspectives. Some tough decisions and honest appraisals of performance are always needed – our performances included.

If we are honest and have not done this before, we need to acknowledge that we are playing the role of coach here, not our usual role of star player. Our gut or mind may not know what is in the gut or minds of family members unless we ask them. Jay Hughes talks about developing a beginner's mindset. In "Family – the Compact among Generations", he suggests (at page 20), "Fostering beginner's mind in combination with seven-generation thinking affords a family a process and practice that lets its talents and gifts emerge through the increased self-awareness and happiness of its members".

We then need to develop the family's human and intellectual capital. Ultimately, we want them to say, as Lao Tzu said of the greatest leader, "This leader's followers say: "We did it ourselves".

"If you want to build a ship, don't drum up people to collect wood, and don't assign them tasks and work, but rather teach them to long for the endless immensity of the sea" – Antoine de Saint-Exupery

Because of your efforts, your people will have to share important assets and decisions with a broader range of people than you ever had to. Remember how you prefer to be the ultimate decision-maker and the frustration or other emotions when you have to share certain things you value. It is not always easy being them!

Of course, there is a lot of training, discussion and buy-in from the players but the coach's role when there are egos involved is key.

There is an Australian family succession story that is known all around the world as it is taught at the International Institute for Management Development in Lausanne, Switzerland. It is less well-known in Australia, where we tend to look overseas for inspiration. It is the story of four generations of the Owens family.

In 1906, the patriarch, Richard Owens used lottery winnings and his savings to buy his first general store in Wollombi in the Hunter Valley outside Sydney. It was a success until 1929 when he died unexpectedly (it often happens). His three sons, Bill, Arthur and George battled through the Great Depression. There were clashes but the ritual of daily meals kept the family together. The eldest brother preferred army life to the business but never handed over control. The business lacked leadership and gatherings became less frequent.

Richard gave an ultimatum that he would resign unless the business was run more commercially. The second generation continued to meddle in the business and Richard Junior arranged for the businesses to be divided among the three family branches. Each family was responsible for its own business.

Richard decided, after going to a family business course, that a family constitution would be critical, but he knew there was no magic template that a consultant could provide. Rather, the family would have to spend time and energy developing a solution that was right for their family. The process must precede the document. Richard said, “My advice to other families is: Get the right structure and then continue to work at it. It sounds cliched, but a family constitution is a living document. I think that leaders of family businesses sometimes hold on too long. I say – move over and get into something else. Give your kids a chance at success.”

Over three years and five drafts, they got there. There was also an advisory council with three non-family members. Richard sadly passed away in recent years. I would suggest that his legacy has been assured.

Structure, with real foundations, is essential. By foundations, we mean consensus on where to build and numerous joint decisions to develop the family’s unique way of doing things, to the point where new family members can give an informed decision to agree to live within the plan. The plan must be flexible to allow new views. The structure should have exits so that no-one feels they have to go through the wall and jeopardise the entire building. Compromise should be a regularly used muscle not something the lawyers suggest at the last minute to get a deal done at a mediation or on the steps of a Court.

Shareholders Agreements for family companies are, in my experience, rarely prepared and less rarely reflect everyone’s views and less rarely again, signed. All they achieve is to reinforce a view that efforts in this regard are doomed and that one voice is being forced onto everyone. Our experience is that a Family Agreement has much more chance of success if it is prepared after numerous meetings and dress rehearsals. What families need first is a plan. For a nascent business, a business plan is far more important than a Shareholders Agreement.

So, armed with these new approaches, what is going to be your first step? What joint decisions can the family make in the next month that would make you all feel more positive about the contributions you can make together to this process?

LEGACY LAW PTY LIMITED
t 02 9188 3980 e dgriffin@legacylaw.com.au a Level 3, The Cooperage, 56 Bowman Street Pyrmont NSW 2009 | PO Box 68 Pyrmont NSW 2009 w www.legacylaw.com.au
ABN 58 600 167 959