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All in the Family: Managing Business Disputes with Relatives

BY FRANK E.A. SANDER AND ROBERT C. BORDONE

All in the Family: Managing Business Disputes with Relatives

Even in the smoothest-running family businesses, issues such as succession and inheritance create conflicts. Here's how to resolve disputes with minimum wear and tear on relationships.

BY FRANK E.A. SANDER AND ROBERT C. BORDONE

WHAT HAPPENS WHEN FAMILY MEMBERS go into business together? In a few lucky cases, harmony and success follow without effort. More often, however, history, emotions, and competing visions of the firm's future complicate matters. Because of the risk posed to relationships outside the office, many avoid confrontation with family members and hope that the tension will pass. Others behave in ways that make matters worse, jeopardizing not only the viability of the company but also the family itself.

Imagine the predicament faced by a 68-year-old CEO and board chairman of a large media company that has been in his family for three generations. During his tenure, he built up the business from a local, highly respected newspaper into a national empire of more than 30 local dailies and several cable TV outlets. The CEO would like to turn the business over to one of his three children in the next few years and enjoy his retirement. But which child to choose? The eldest, age 40, is a successful pediatrician with no real interest in running a newspaper business. The middle child, age 38, has an MBA from a prestigious university and runs a small, successful video-game production company. The youngest, who is 34, has focused more on exotic travel adventures than on school or work.

Because of her entrepreneurial spirit and business know-how, the middle child seems most capable of taking over the business. Yet it's the youngest who speaks openly about wanting to fill his father's shoes. The CEO worries about whether this son has the stability and experience needed to run such a large operation. To complicate matters, several internal vice presidents are well qualified to take over the helm.

The specter of a rancorous dispute feels real and threatening. How can the CEO negotiate a solution that will please everyone? As we will show, when it comes to heading off or resolving business disputes with family, the basics of negotiation—including an analysis of interests and options—deserve special attention. Thorough preparation, transparency, third-party intervention, and long-term planning can also help ensure that your family and your business will prosper.

Managing family-business conflicts requires the same mutual-gains negotiation tools that workplace disputes require.

Fine-tune your negotiation skills

Managing conflict within a family business requires the same set of mutual-gains negotiation tools that you would use to manage any workplace dispute. Here, we analyze how these tools apply to the particular concerns often present in family situations.

Interests.

In business disputes among family members, a great deal of history typically exists between parties, much of it laden with emotion. When preparing to negotiate with family members, it's crucial to consider these hidden emotional and relational interests in addition to the tangible interests related to the issues being negotiated.

Such interests can assist or hinder the progress of a negotiation. For example, some family members may view maintaining harmony as a key interest, one that may be less important to other members. Notably, the desire to keep the peace may not always lead to the best negotiated outcomes. In their research, William Rick Fry, Ira J. Firestone, and David L. Williams found that intimate, romantic partners were less effective at reaching integrative deals than were arm's-length business partners.

In families, negative emotions such as jealousy, anger, or resentment can simmer for years. When family members work together, these feelings can erupt into destructive interests such as vengeance, competition, or a desire to "even the score." Since it's unlikely that a family member seeking revenge will make his intentions known, you must be attuned to sources of trouble. It may well be that the media magnate's two older children feel as if they've worked hard while their younger brother has been wasting the family fortune on a life of leisure. They're unlikely to react well to his possible takeover.

Options.

In family-business disputes, the range of feasible options on the table is usually limited by underlying dynamics. Consider that an attractive way to divide assets in the breakup of a company often involves a blind auction where interested stakeholders bid on various assets and then pay the others for their share. But what if it's a family business? If one member has less capital than other bidders, this method of dividing assets may be unacceptable. Views about the value of money, career choice, and fairness can be critical when a family is seeking to maintain strong bonds. Because of the constraints posed by family ties, options that might otherwise be attractive become unworkable.

Criteria.

Conventional negotiation analysis advises parties to apply objective standards or criteria when seeking to resolve distributive issues in a negotiation, such as market standards, industry norms, or the average of several professional estimates of worth. But applying objective standards can also be more complicated in family situations. Suppose that some family members view family traditions as a legitimate criterion. Other members may find these traditions to be anachronistic or biased. For example, in some families, tradition may dictate that the preferences of the eldest son be given precedence over those of other children. Some members may find this an illegitimate criterion from which to determine succession.

To resolve difficult distributive questions, the advice of a mediator or arbitrator often can be helpful. In the family context, however, some members may be threatened by the mere suggestion of bringing in an outsider. To them, it may suggest a breakdown of the family's ability to deal with conflicts internally.

Relationships and alternatives.

Whenever you're preparing to negotiate, it's wise to consider how best to manage working relationships between parties. As we've suggested, managing relationships when families negotiate business terms can be particularly difficult. Even if one party has a strong substantive *BATNA*, or *best alternative to a negotiated agreement*, it's hard to walk away from one's family.

For this reason, you'll need to consider your "relationship BATNA" when negotiating business with family. Suppose that the CEO of the newspaper chain decides that the strongest candidate for his position is a senior VP from within the company rather than one of his children. On its merits, his BATNA is strong. But if all three of his children feel deeply betrayed by this decision, he won't have any "backup children" waiting in the wings to serve as his family.

Negotiating the family business: Four guidelines

Given these complications, it's tempting to follow the age-old advice against mixing business with family. Yet this could mean passing up lucrative opportunities, not to mention the potential rewards of working closely with loved ones. Moreover, in situations such as inheritance and divorce, avoiding such negotiations is simply not possible. Here are four guidelines to make these negotiations easier and more fruitful for everyone:

1. Prepare for complications.

An awareness and analysis of the complications listed above—related to interests, options, criteria, relationships, and alternatives—will dramatically increase your odds of negotiation success. Careful consideration of the web of relationships in your family and in your business will help you avoid pitfalls that could offend or impose on other members of your organization—including your family.

2. Strive for transparency.

Once you've identified the various challenges of resolving your family dispute, it may be tempting to hope that they simply won't come up. This would be a mistake. When you brush aside difficult issues, other family members may play out long-held animosities in the course of negotiating the business issues at stake. Better to be explicit and transparent about the challenges and issues implicated by the negotiation.

When sitting down with his three children to discuss succession, for instance, the media-company CEO might say: "I want to begin by acknowledging that we probably each have strong feelings about what we're discussing today. I hope we can talk about our concerns in a way that is forthright and that honors our wonderful family. If we reach an impasse, let's try to work things out in a spirit of understanding. I expect this raises for all of us issues not just about our business, but also about ourselves—our past and our future as a family." Addressing difficult issues up front can seem scary or time-consuming, but often it can make dispute resolution easier in the long run. For more help in framing an emotionally charged family negotiation, we recommend *Difficult Conversations: How to Discuss What Matters Most* (Penguin Putnam, 2000) by our colleagues Doug Stone, Bruce Patton, and Sheila Heen.

3. Consult a neutral adviser.

At times, your negotiation may get stuck on a particularly contentious issue. Typically, this is when negative emotions surface, as family members dig in their heels and dredge up years of history that don't help resolve the conflict.

At the first sign of trouble, consider raising the possibility of hiring a third-party neutral, whether a mediator, a family therapist, a mutually trusted friend, or a business expert. Imagine, for example, that the CEO and his children agree that selling cable TV outlets in certain markets should be part of their transition plan. The issue is complicated by the fact that the eldest child's spouse happens to work for one of the stations that the other two children think should be on the selling block. Putting this question to a majority vote might lead to hurt feelings, and it might be similarly unwise for the CEO to make this call on his own. Seeking the counsel of an agreed-upon mediator might be a suitable way to resolve this question and avoid a major family crisis.

In this case, the CEO wisely enlisted the aid of an unbiased business analyst who provided data on the pros and cons of various transition plans. The family then worked with a professional mediator who helped facilitate the process of the sale of the TV outlets by separating emotional issues from substantive ones.

4. Plan ahead.

While many sources of disputes in the operation and management of a family-run business are unpredictable, you can plan for others, such as those related to succession, inheritance, and strategic planning. Whenever possible, family members entering into a business relationship should agree explicitly and in advance on the norms, standards, and processes they will use to resolve disputes that may arise. To ensure that all relevant stakeholders remain in agreement, it also makes sense to revisit these dispute-resolution provisions when individual family members enter, leave, or invest in the business.

You also can anticipate specific family issues that are ripe for conflict and address them before they tear at the family fabric. We know of a family of three brothers who co-owned several restaurants in suburban New Jersey for more than 30 years. Each had several children involved in various aspects of the restaurants' operation. As the brothers faced retirement, they realized the family had grown large enough to make dividing the restaurants among their children a potentially bitter struggle. To head off a dispute, they decided to sell the restaurants and divide the proceeds among the three of them. Two of the brothers then purchased restaurants of their own; the other retired. While this may not have been the most elegant business solution, it accomplished the primary goals of resolving their joint business interest and ensuring that the family remained close for years to come.

Finally, when planning to manage business and family, keep in mind that you may face special legal and financial issues, such as inheritance law, tax implications, nepotism, and divorce or antitrust concerns. ✧

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