WHEN THE BUSINESS IS ALL IN THE FAMILY

THE ROBINS KAPLAN SPOTLIGHT

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Workplace dynamics can be fraught with peril. Family dynamics can be even more treacherous. Add them together into a family business and the result can create a recipe for complex fiduciary relationships and potential litigation. Indeed, family tensions magnify when moved into the business context, where recognition of legal duties become blurred and disputes can, without intervention, result in litigation that jeopardizes family relationships, the business, and everyone's investment in it. So, what causes these disputes, and how can they be mitigated?

WHAT ARE THE SOURCES OF CONFLICT?

Family business owners can find infinite issues to fight about, but the common points of contention typically result from unresolved questions of ownership and authority.

First, is there a clear and rational succession plan? Is there an assumption that the oldest child or a favored son will take over the business? Disputes can arise when the presumed successor does not want that role or is not the most qualified for it.

Second, undefined roles create problems. If the founder of the family business hands over the reins to a member of the next generation—at least in name— but still steps in to exert influence, it will undermine the successor's authority and credibility, and create confusion over who really calls the shots.

Third, unspoken, unclear, and conflicting expectations can pose significant problems. Does the second generation presume permanent employment by the company? Or would some prefer to be bought out to pursue something other than what the family business would require them to do?

Like many disputes, most family business conflicts are based in either a failure to communicate or a failure to see things from someone else's perspective—or both.

WHAT STRATEGIES MINIMIZE AND MITIGATE CONFLICT?

The best way to avoid conflict is to start with adequate planning and open communication. The sooner planning can begin, the less likely the chances disputes can arise. For example, family stakeholders should define why they believe the business exists and address what each member wants, needs, and expects from it. What does the business expect of the family members? Establishing clear guidelines and expectations early on— and then enforcing them—avoids many pitfalls. For instance, rather than just assuming that the next generation will want to be or should be involved in the business, establish clear guidelines for who can be: what qualifications are required, and how a succession plan will be determined. Revisit these rules and guidelines regularly to spot potential areas of dispute on the horizon and address those scenarios objectively before people get too emotionally invested in the decision.

HOW CAN THESE STRATEGIES BE IMPLEMENTED?

Planning ahead sounds easier than it actually is. After all, the early years of a company—and sometimes the later years as well—often means living and breathing the immediate needs of the company. And long-term planning simply falls by the wayside. Plus, even with early planning, many of the challenges family businesses face exist from the outset. Therefore, it is the rare family business that can manage these issues without some external expertise.

Hiring legal counsel to draft certain legal agreements (buy-sell, shareholder and voting trust, operating, and employment) makes an obvious first and necessary step in establishing expectations. But legal documents only do so much to address family dynamics.

Hiring a consultant—on behalf of the company— to deal head on with the more intangible areas of friction may sound like a luxury the business cannot afford. But the cost of unresolved conflicts and inadequate planning could cost much more in the long run.

Enlisting the help of an objective outside consultant skilled in navigating corporate conflicts will ultimately benefit the company as a whole, which, in turn, will benefit all shareholders. Discussions that might otherwise escalate into conflict when occurring directly between stakeholders can be constructively addressed by a knowledgeable facilitator trained to avoid or minimize tension. The consultant can identify unspoken assumptions causing conflicts, expose dysfunctions and seek to repair them, improve communications that might be stifled by family dynamics, and mediate necessary conversations that have, up to that point, been prone to breakdown and further damage. The consultant should be someone every key stakeholder signs on to—not the attorney, accountant, or trusted advisor of just one member.

At the end of the day, while hiring a business lawyer or a consultant is not a guaranteed way to avoid litigation, doing so can lessen the chances that a family-business dispute will escalate to the degree that one party sues another. But if that happens, finding counsel who can aggressively and strategically advocate for your objectives is paramount. Ideally, however, litigation counsel understands that the legal strategy must also take into account the very human and emotional elements that often drive these types of disputes.

[5] Jean Morrison founded Morrison and Associates, Inc., a human resources management consulting first specializing in conflict resolution, conflict management, and organizational transitions. She has extensive experience coaching and counseling businesses and organizations of all sizes, including closely held and family businesses.