



NEWSLETTER

Aspen Family Business Group

The Aspen Family Business group: David Bork · Leslie Dashew · Dennis T. Jaffe · Sam H. Lane · Joe Paul · serves as a resource to help families create an environment in which members are open and willing to learn and grow. It is in such a setting that families are able to envision and achieve the positive possibilities of their business as well as maximize enjoyment of their family life. Our goal is for the family to develop harmonious, healthy, constructive interpersonal relationships and to maximize the success of their family-owned enterprise.

Getting Good Agreements Within Families: A Process, not a Product

fall 2003

A family is experienced by family members as it was in the past, not as it is today, or is becoming in the future. That is because emotional time is eternal—people are affected by personal hurts, understandings, needs and wishes as if they happened yesterday. Therefore, as a family grows, it must develop some clarity about how it will operate its business or financial enterprise, or risk being derailed by emotional baggage from the past.

A family in business cannot remain the same. New generations are born and grow up, and others enter by marriage. New generations do not carry the collective memory of the founding generation. Therefore, over time, informal understandings and ways of working have to be documented, so that new members can understand and live by them. These agreements must be clearly spelled out, in writing. As a family and its various enterprises

grow, the number of such agreements multiplies.

Many family agreements—trusts, estate plans, and partnership agreements—are written in legalese. They are rarely seen, referred to or understood. So, if a family is to function, it needs to create operating agreements that are clear, understood and used by members. This means that legal documents need to be explained and clarified. Other family intentions are not legally binding, but when an older generation expects family members to abide by them, they must be codified.

This issue of the newsletter talks about some of the family agreements that families we have worked with are using to make their operations more transparent and helpful to each other.

Agreements may seem like a needlessly bureaucratic path for a personal entity like a family. But, *(continued on p.7)*

looking ahead

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See page 3 for details

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A Safe Place to Speak: Rules of Order for Families in Business

by Leslie Dashew

The following is excerpted from the forthcoming book being written by the Aspen Family Business Group

Families in business have the challenge of complexity which other families do not have. They have many more decisions to make together than other families and may have role confusion: am I dad or employer at this moment? Families of wealth share some of the web of entanglements experienced by families who own businesses, as they may share management of their assets, have similar issues with entitlement, and find themselves confused about which relationship is “active” at the moment: family or business.

Thus we have always believed that having a place to speak that is appropriate to the role, safe and guided by ground rules adopted by that group, are essential to success in the family.

From the earliest tribes, to the first parliaments of England, to families who share assets in our modern world, guidelines are required to assure that a conversation is constructive, efficient and effective.

These “rules for order” are similar to the notion of parliamentary procedure that has guided deliberative bodies for several centuries. The roots of the word “parliamentary” are “to speak” and “a place to speak.” In the thirteenth century, the word “parliament” was used to describe any important meeting held for the purpose of discussion. From the earliest tribes, to the first parliaments of England, to families who share assets in our modern world, guidelines are required to assure that a conversation is constructive, efficient and effective.

Today’s families are often frustrated by their initial attempts to meet together



as families in business. Often, the informal nature of families, the history of parent-child or sibling patterns of relating and the lack of an

organized dialogue or focus, contribute to somewhat chaotic, “unruly” or unproductive conversations. This is why consultants to families often create “legitimizing structures” where dialogue can occur

Having a facilitator often helps the family feel safer, and normally a set of ground rules is established so that everyone operates on more of an even playing field.

for owners (a board of directors or shareholder meeting), for managers of the business (management team) or family council (to focus on the goals and challenges of the family). Having a facilitator often helps the family feel safer, and normally a set of ground rules is established so that everyone operates on more of an even playing field.

Like other guides to parliamentary procedure (e.g. Websters), we believe that there are some basic principles which are fundamental to effective meetings of families:

- Strive to promote courtesy, justice, impartiality and equality
- Take up business one item at a time
- Protect the rights of individual, minority and absent members, while the will of the group in its entirety is articulated.
- Choose someone to facilitate or direct the discussion and keep order (presiding officer, chairperson, president)
- Give all members of the group the

right to bring up ideas, discuss them and come to a conclusion

- Come to an agreement among all members about what to do

The “institutionalization” of these rules creates stability and trust in the processes of the organization.

Guidelines for Conducting the Meeting:

Some samples of guidelines families may wish to consider include:

- Members have a right to sufficient notice for a meeting
- The “chair” or presiding officer calls the meeting to order on time
- The chair follows the agenda to assure that the purpose of the meeting is accomplished. Some aspects of this include:

Adopting/revising the agenda

Prioritizing the agenda

Time-boxing the agenda

The chair does not take sides, rather assures that all points of view are heard and that the dialogue or debate remains orderly, following agreed upon rules.

Rules for Participation:

- One person speaks at a time (“has the floor”)
- Members take turns speaking
- That person can not speak again on the topic at hand until all others have had an opportunity to speak on the topic, or “motion”

Elections of officers are prescribed by the by-laws or constitution of the organization and these should set forth the dates, method of nominating candidates, procedure(s) for voting and the terms of office.

In future issues of the newsletter and of course in the book, we will go into much greater detail on these concepts, rules and procedures.

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books

- A) **The Best of the Human Side**
A Collection of Articles
by Leslie Dashew \$15
- B) **Working With Family Business**
by David Bork, Dennis T. Jaffe,
Sam H. Lane, Leslie Dashew, and
Quentin G. Heisler \$37
- C) **Working With the Ones You Love**
by Dennis T. Jaffe \$15
- D) **Family Business, Risky Business**
by David Bork \$15
- E) **Health, Wealth and Families: How to
Assure Your Wealth Helps, Not Hurts,
Your Family**
by Leslie Dashew \$15

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monographs

- 1. **It Ain't Easy to be Rich**
by David Bork
- 2. **Let's Celebrate the Good News
for Family Business**
by David Bork
- 3. **Consulting to the Family Business**
by Dennis Jaffe
- 4. **Family Boards:
How to Make Them Work**
by Sam H. Lane
- 5. **Joining the Family Business**
by Leslie Dashew
- 6. **The Challenge of Families
Who Work Together**
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- 7. **Transferring Authority
in Family Business**
by Joe Paul
- 8. **The Challenges of Downsizing
a Family Business**
by Sam H. Lane
- 9. **Succession Planning**
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- 10. **Exploring Differences in a Hierarchy**
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Code of Conduct

by Joe Paul



Our lives are shaped by the commitments we make. Marriage, parenthood, ownership, military service and employment are all examples of these defining commitments.

Some of these commitments that we make are legally binding. Others are morally binding. The legally binding commitments are contractual, while the morally binding commitments are sometimes known as covenants.

The Code of Conduct below is an example of covenants that were reached by a group of three siblings who are the third generation owners of a family business. In the course of a weekend retreat they worked very hard to put these ideas and feelings into words. They made this effort because they realized that the long term stability of their family and their business was, and would increasingly be, based on the quality of their relationships with one another.

Leadership Covenants

In recognition of the challenges of leading a family in business across generations and out of our desire to enrich and pass on the legacy of our parents we promise:

- To deal with one another with honesty, trust, integrity, love, respect and maturity.
- To share power and authority responsibly by listening to each other, respecting our respective opinions, showing humility, looking at all sides of an issue before making a decision, being open minded, supporting one another in public once decisions have been

made, welcoming constructive disagreement among us, but being united in public.

- To disagree skillfully, with civility and without hostility or anger.
- To develop the skills necessary to diffuse hostile misunderstandings or disagreements.
- To recognize the unique nature of our relationships with one another and place a priority on clear and skillful communication.
- To stay positively connected by meeting regularly as a family, as owners and as managers, so that each of these parts of our lives gets the attention it needs.
- To encourage the development of the next generation as stewards of their shared assets, and possibly as leaders of the company.

Moral commitments are often made without being spoken or written. At other times they are made verbally and sealed with a handshake. However, there are points in relationships when these commitments are made even more powerful and binding when they are put into writing. The power of it

The discussion that is required to put these ideas and feelings into words that everyone accepts brings greater clarity and minimizes the chance that incorrect assumptions will be made.

comes in the thought and conversation that must happen to reach agreement on complicated issues. The discussion that is required to put these ideas and feelings into words that everyone accepts brings greater clarity and minimizes the chances that incorrect assumptions will be made.

Here are a few ideas that may help if you think that your family needs it own

covenants:

- Set aside an extended period of time, such as a weekend.
 - Pick a setting that is relaxing for you all and where you will not be distracted by telephones or too much entertainment and extraneous activity.
 - Set aside at least two breaks from discussions during the day to have time alone with your thoughts.
 - Resolve to be open to outcomes without being overly attached to a specific outcome that you have thought of earlier.
 - Create an environment that encourages mutual understanding and dialogue rather than debate.
 - If you are comfortable with the technology, use a laptop computer connected to an LCD projector when the time comes to collectively draft the language of your covenants. You may find that it is a much more engaging media than flipcharts.
 - Expect to be frustrated at times during the process. When you feel stuck, probe to understand each of your underlying values that may not be aligned.
 - Consider using a professional facilitator, so that no family member will be burdened with responsibility of leading the process at the expense of being able to be an equal participant with others.
- No document, whether contractual or covenantal, can control negative emotional dynamics or the hostile politics of some family businesses. But the actual process of reaching these agreements as a group and committing them to writing will reduce your chances of misunderstandings, hostility, hurt feelings, or even litigation.

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Buy-Sell Agreements

by Sam H. Lane, Ph.D.



A Buy-Sell Agreement is extremely important in a family owned business, as it specifies the parameters of the transfer of ownership. Some partnerships and

L.L.C.'s contain a Buy-Sell provision, but many Articles of Incorporation do not. Thus, in the case of a corporation, it is up to the shareholders to be proactive to formulate one.

Absent a Buy-Sell Agreement, ownership transfer may occur in the emotion of the moment, rather than according to any previously agreed-to principles. This absence may prevent the dissolution of a difficult business relationship, because conditions are not specified by which people who have reached a business impasse can separate their interests. This may result in a stalemate. The lack of specified procedures can be doubly painful in the case where a family owner has died, leaving the grieving spouse to negotiate with the remaining family owners. When this happens, the inevitable difficulties of working out the disposition of the survivors' ownership makes a hard situation even worse. Having agreed to principles regarding the transfer of ownership is one more tool to promote harmony and ensure the success of the enterprise. The agreement should be balanced between the needs of the company going forward and those of a departing participant. However, as a rule of thumb, the ability of the enterprise to go forward must receive a high priority.

The process of working out the Buy-Sell Agreement many times triggers productive conversations among the family members that get them to focus on a multigenerational perspective.

A number of issues should be covered in a Buy-Sell Agreement.

- Who can be an Owner?
- What are the "trigger events" for ownership transfer, such as death, disability, or redemption?
- How shall an ownership position be valued and what are the terms of a purchase?

Some of these questions have better answers than others, but there are no "right and wrong" responses. It is pretty much whatever everyone determines works best.

The question of who can be an owner addresses how narrowly or broadly people can participate in the enterprise. As the heirs increase in number and diversity, the challenges of managing the ownership increase geometrically. Limiting the breadth of this progression may make sense from a business standpoint, but may be a tough sell to a family member.

Some ownership transfer triggering events are straightforward—some are not. In the case of death, the most challenging question is whether the departed owner's family can inherit his or her ownership, or does it come back into

A good rule of thumb is to establish a valuation process that can withstand public scrutiny and is fair.

the fold? Another potentially vexing area regards whether someone can force the company to redeem some or all their shares. A negative answer to this point, or not addressing it, runs the risk of "trapping" someone in their investment. Typically, if this happens, it is a seed of great trouble down the road.

In privately held companies, the valuation process may not seem to produce a number anywhere near the "full value" of the stock. This difference may occur for estate tax purposes, but it

also can happen because the people who control the process don't want to pay out more than they have to in a redemption situation. A good rule of thumb is to establish a valuation process that can withstand public scrutiny, and is fair.

In a public company, the transfer of ownership provisions is extremely important because the control of the company could be placed in the balance by family members selling their shares to non-family parties. The valuation formula is less important in this case because the public markets take care of this point.

Another issue families have to sort through is whether the company has the first right of refusal if stock becomes available, and is the company obligated to purchase this stock? Relatedly, how should the purchase be funded, and on what terms?

It is important to underscore the necessity of having all these contingencies worked out before they occur, so resolutions can be reached in a calm and thoughtful manner, instead of in the heat of the moment

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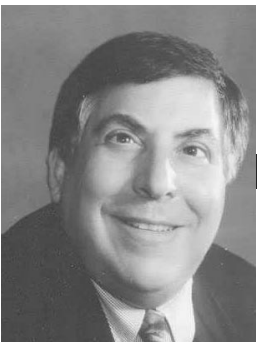
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Family Employment Agreements

by Dennis T. Jaffe, Ph.D.

As a person grows up in a family that owns a business, it is inevitable that par-

ents will dream that some of their offspring will enter the business, and their children will dream about working with mom or dad and eventually taking their place. A very natural Oedipal fantasy, but in a family business, one that has a firm basis in reality. In a traditional family, the succession question was established—the eldest son inherited, and the others found professions or married well. But today, as women join men in the workplace, and families are less regulated by birth order, the family may face a situation where there are too many family members for too few places in the business. And, in a world where business becomes more global, complex and competitive, the business of tomorrow may need some very different skills than it needed in the past.

Creating clear rules to govern family employment is therefore a protection for the family and for the business. It anticipates family rivalries and protects the business from incompetent heirs. When a family grows, from a founder, to a group of siblings, to a third generation of cousins and new spouses, it needs to define clearly what is needed and expected from a family member who is employed in the business. This policy should be defined collaboratively by the whole family, but it is important to realize that the family leader who has the controlling role in the business has the final say about this matter, in consultation with the Board of Directors.

Several key areas must be included in a **Family Employment Agreement**. Each includes a set of practices, and is usually accompanied by an explanation for the family's choices:

Core Values and Mindset:

What does the business mean to the

family? What values guide it? Where does the family want family members to be in the business? The mindset about the purpose of the business and family participation begins with a set of values. Is employment a right for family members, or a privilege that must be earned? Is a family employee just like any other, or are there special perks, expectations and career paths that are open to family members?

Eligibility:

What family members are eligible to join? Do all family members have a chance, or are there very limited places available? One issue that families must face is whether in-laws should be able to join. There are different views about this: one, that it adds to the family talent pool; the other, that it leads to unnecessary conflict.

The mindset about the purpose of the business and family participation begins with a set of values.

The preparation and requirements for entry are also specified. Many families require an advanced degree relevant to the business, and often outside employment for a period of years. These requirements reinforce the value that competence and self-confidence is needed for family employees. The rationale for outside employment is to help the family members learn their capability in an environment where they are not the owner's relatives, and are appreciated on their own merits. It is also to gain experience in another business, often a larger one than that of the family, to learn good business practices.

Entry Process:

How do family members apply for jobs? Do they just ask, or must they find a job available? How do they do this without putting a manager in a difficult position? Generally, there is Board involvement with family mem-

ber entry. Defining a position and applying must be specified.

Supervision and Performance Evaluation:

Too often, family members just work, get a paycheck and because they are family, that is that. But an employment agreement should specify how a family member receives supervision and feedback about performance. A family member often has a hard time getting clear feedback about performance, so care must be paid to make sure that it happens. Some families use independent Board members as mentors for family members. Expectations and special opportunities provided by the family for career and executive skill development should be made clear, with incentives to take advantage of them.

Compensation:

Since some family members work in the business, and others do not, the question of salary should be clarified. Do all family members expect equal salaries, or are they compensated at the market rate for their jobs? We clearly feel that family members should be paid for the job, and receive other income as gift or dividend distribution along with family members who do not work in the business.

All of these areas should be spelled out as young family members grow up, and consider entering the business. In order to prepare themselves and develop the necessary mindset and motivation for their aspirations, they need to know the rules and expectations. Of course, these are only the agreements about employment. The later issue of who will attain leadership has still to be addressed among the family and non-family contributors to the business.

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A Note from the Gathering

Karen Kryla, a family business consultant in the Napa Valley who attended the gathering with one of her client families, wrote this letter to send to her fellow mentees. She has graciously given us permission to include it in the newsletter.

A special thanks to the Mentors for including me in their conference. It was a very positive experience for me and for the family that came with me to the conference.

Mentees:

Don't miss out on this opportunity next year!

For You:

You'll never get the full flavor of working with Family Businesses by just reading, studying and attending FFI meetings. You really need to see and experience for yourselves the members of the AFBG in action—working and helping Family Businesses move forward in their business and lives.

As Joe would say, it's the experience that you need to gain that intuition and tacit knowledge necessary to be effective in your work. Not only did I have the experience of watching AFBG interacting and working with the families, the mentors also allowed and encouraged me to participate with them as a "staff member" in the workshops.

For the Business Family You Bring:

The family that I brought to Aspen was tremendously pleased to have gone to the meeting. I received multiple thank-you's from several of the family members for encouraging them to attend. They left the meeting with resolve to further their family business and heritage and to work on ways to bring their family closer together despite differences and difficulties that they have in the past.

For Your Relationship with Your Family Business Client:

Spending time with your clients strengthens your relationship with them. I think that this is particularly true when your interactions with them span both business discussions and enjoying recreational opportunities with them as well. This conference offers you opportunities for both.

My family has asked me to meet with them later this month to help them to set up their first ever full Family Meeting. The conference certainly has helped to pave the way for the extension of the work that I do for them.

For Your Relationship with your Mentors:

Get to know these guys! They're a wealth of information and a resource not to be squandered.

Hope to see you at the Gathering next year.

Karen Kryla, MKF Group, LLP, The Wine Business Center



(continued from p.1)

many families have large businesses, with significant wealth shared among many people with different views, needs and personalities. In fact, clear agreements that everyone accepts actually lessen anxiety and uncertainty for family members.

While some people may not like some aspects of a family agreement, if the agreement is clear and spelled out, people at least know what is expected of them, what they can count on, and where they stand.

Agreements are particularly important because a family negotiates the boundary between the family, its many individuals, and the operating business(es) jointly owned by family members. Family members can take on a variety of roles—employment, board membership, advising, participating in philanthropy, starting a new venture—that the family can support. Since family members are so different, the family has to set out the rules and paths for a family member to become involved.

We offer, in this newsletter, a number of guidelines for a family to use when undertaking the process of creating good agreements among themselves.

family business assessments

As an advisor to complex wealthy families and family businesses, how often have you wished you could quickly get information about areas where family members do not see eye to eye, and find a way to bring those areas to the attention of your clients in a non-threatening way?

The Aspen Family Business Inventory helps families who are in business together to sort out the issues of communication, succession, work roles and family boundaries, effective management, and their vision of the future.

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