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Customizing a Family Legacy

Football fans, shoppers and even astronauts are among the many beneficiaries of Logan, Utah-based Ducworks' highly specialized projects.

The family-owned business constructed a retractable roof — spanning nearly two city blocks — for downtown Salt Lake City's City Creek Center. It also crafted custom metal work for Utah State University's Romney Stadium and Park City's Sky Lodge. And going back to Ducworks' beginnings, its NASA training modules are still being used at Johnson Space Center in Houston.

In 1994, Roy and Nancy Hales founded the company to support The Boeing Company's Rocketdyne division. They manufactured prototypes of International Space Station test hardware, which was shipped to NASA's neutral buoyancy laboratories in Huntsville, Alabama, and Houston for underwater testing by astronauts. Ducworks also began performing underwater assembly of these structures with their own crew of divers.

Over the next three decades, the Hales took on more projects and more employees, eventually moving to 50,000 square feet of office and manufacturing space to accommodate its 50 workers and growing body of commercial construction and aerospace work.

When the Hales retired last year, it may have seemed inevitable that their children, now leaders in the company, would buy the business. Son Jakob Hales and daughter Tanna Hales Jenkins began working at Ducworks as teenagers in the mid-1990s. Son-in-law Jeremy Jenkins was part of the business before he married Tanna and became part of the family, hired as a high school student to help with cleaning, inspection and assembly.

When Roy and Nancy decided it was time to step away, succession planning was critical in the transition process, Jenkins said.

The Hales brought on a third party — Alexander Mojica, senior wealth planning strategist for Commerce Bank of Washington affiliate Zions Bank — to ease the transition.

Ducworks owners, left to right: Jeremy Jenkins, Tanna Hales Jenkins, Jakob Hales, and founders Nancy and Roy Hales.

"In our research, we've seen some types of businesses that have no continuity plan," Jenkins said. "The owner has done everything himself and is the one who knows about everything, from the machines to the customers. It's important to have a plan for how to move on."

Even though Jenkins and Jakob Hales had been helping to run the company for more than a decade, Mojica served as a neutral participant to create a plan that served the interests of all parties involved.

"Alex was instrumental in making that happen," said Jeremy Jenkins, president and chief operating officer. "He put together a plan to meet the needs of the outgoing owners that wasn't going to hurt the company moving forward."

Today, Jakob is CEO of Ducworks, Jeremy is COO, and Tanna runs the real estate holding company. Meanwhile, a third generation of the Hales family is dipping its toes in the family business.

Nearly 30 years after Roy and Nancy Hales began creating prototypes for the International Space Station, their grandchildren are engaged in Ducworks' efforts to support another space mission — NASA's Space Launch System program, aimed at returning U.S. astronauts to the moon.

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The featured family businesses are clients of one of Zions Bancorporation's collection of great banks: Amegy Bank; California Bank & Trust; The Commerce Bank of Oregon; The Commerce Bank of Washington; National Bank of Arizona; Nevada State Bank; Vectra Bank Colorado; and Zions Bank. All other images are stock photography.

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The children of Jakob, Jeremy and Tanna have been helping to reverse-engineer and refurbish old tools that were used on Saturn- and Apollo-era space missions, cutting out parts and figuring out how the mechanisms function.

"The people that built the parts are retired," Jenkins said. "With the new program, they are sending old designs to us to figure out how to refurbish. Some of the parts are rusty from sitting outside."

Even in the current economic environment as businesses navigate the coronavirus pandemic, the future is bright for Ducworks and its 70 employees. The plant has been humming through the public health crisis with minimal interruptions. And new and exciting projects continue to keep employees engaged, including the next generation of the family.

"We don't know if they (the next generation) will stick with it, but there's definitely potential for them to get involved in business," Jenkins said. "Right now, they're learning and developing a work ethic and that's wonderful."

Avoid the Pitfall of Systemic Uncertainty When Making Decisions About Shared Family Assets

By David Lansky, Ph.D.

***Primogeniture** is the right, by law or custom, of the firstborn legitimate son to inherit his parent's estate, in preference to shared inheritance among all children.*

The law of primogeniture in Europe has its origins in Medieval Europe which, due to the feudal system of ownership, necessitated that the estates of land-owning feudal lords be kept as large and united as possible to maintain social stability as well as the wealth, power and social standing of their families. In Western democracies today, primogeniture, while still existing in some forms, is generally considered atavistic, regressive or a throwback to less civilized times, because as a practice it is viewed as representing patriarchal, autocratic, anti-democratic, sexist or exclusionary thinking. Indeed, in some parts of the Western world, "forced heirship" laws have been passed to ensure that estates are shared equally among inheritors, resulting in the purposeful dilution of family assets, and dispersion of decision-making authority — exactly the opposite of the goal of primogeniture practices.

All that being said, the practice of primogeniture has at least one positive correlate: That ownership and control of an estate are securely vested in one party, with no uncertainty or ambiguity as to who has decision rights and obligations to keep the assets secure.

Contrast that with contemporary estate and wealth transfer plans in which assets are transferred from a single wealth creator to a group of inheritors and beneficiaries. Whereas this transfer may equalize the ownership of a family's assets, it is potentially one of the most challenging matters an enterprising family can face, because shared ownership may be accompanied by a shared sense of uncertainty or ambiguity as to who has the right to make which decisions, and under what circumstances.

Whether the assets consist of an operating business, a portfolio of invested securities, a family foundation, real estate holdings or other shared holdings, this ownership transition — involving a shift from a single controlling owner with a single voice in decision making, to potentially many family owners with many voices in decision making — could introduce a level of systemic uncertainty into the family system.

Five Sources of Systemic Uncertainty

Consider these five ways in which the transfer of ownership from a single controlling owner to potentially many family owners may lead to uncertainty in a family system:

1. Equal ownership conveys equal say, even when the parties differ in experience, competence, skill, etc. A family may struggle with uncertainty in deciding whether all equally owning parties should have equal authority, even for matters in which some parties have little or no expertise, while others have great expertise.
2. Voting and nonvoting shares are created in the course of an ownership transition as a way of ensuring that certain family members (e.g., those working in the business) have authority over certain decisions. Families frequently lack clear understanding of the implications of these different classes of ownership, in particular, a clear understanding of the specific rights that voting shares convey and the specific rights that are withheld from those holding nonvoting shares.
3. Actual ownership of family assets is clear, but it is not clear who should participate, in what manner, in which decisions. Because asset-sharing families often choose to be inclusive in their decision-making, some family members may be invited to participate in decisions to which they are not entitled, raising questions such as how much influence minority shareholders should have and how much weight their opinions should carry.

> Families typically avoid potentially difficult conversations, fearing that such conversations will upset family harmony.

4. Not having articulated "What is yours, mine or ours?", a family sharing responsibility for financial assets will occasionally find themselves taking responsibility for other family matters such as how a sibling's children are raised or how a cousin manages alcohol use. Because they are sharing responsibility for financial capital, do they also share any responsibility for human capital? If so, how much responsibility do they share and for what matters?
5. "Is this a democracy?" Transitioning shared ownership might naturally lead some family members to believe that they are governed by a democratic system ("We are all equal owners of this real estate, so we all have a say in how it will be developed"), when the system is actually autocratic in nature ("Granddad transferred ownership to us, but he is still the ultimate decision maker"). In sociocultural terms this kind of system bears similarity to an "illiberal democracy," (i.e., a democracy in which elections take place but decisions are actually made by a central authority). The uncertainty that evolves from a family's illiberal democracy may result in tension, conflict or disengagement of key parties from what feels to them like a disingenuous system.

Consequences of Systemic Uncertainty in a Family System

Although there may be other sources of uncertainty in a family system in addition to those discussed above, whatever the source of that uncertainty, there are three consequences that I believe are most significant in their impact on the family and on the shared assets:

1. Competition and conflict among individual family members or between family factions about decision authority for investments, operations, acquisitions, divestitures or other actions.

2. Psychological stress and tension, leading to disengagement by family members who wish to leave an unpleasant situation, either physically or psychologically by opting out of any possibly contested matters.
3. Appropriation of authority by nonfamily executives, trustees, external advisers or even family members who observe weakness or indecisiveness in the family ownership group.

Managing Systemic Uncertainty

1. Name It

Systemic uncertainty may be the cause of significant and disruptive dynamics in a family, including tension, hostility and disengagement. There is a tragic element to this in that it can be easy to blame individuals for the appearance of these disruptive dynamics: "It's the family CEO's fault because he just wants control" or "It's my sister's fault because she doesn't know when to mind her own business," etc., when it's actually the nature of the system — uncertainty — causing the disruption. So, a first step in managing uncertainty is understanding the impact it can have on individual or group behavior by calling it out: "It's not you, it's the system!"

In parallel with naming uncertainty comes the ability to talk about it — how it is manifest, its consequences, etc. This may be more difficult than it seems, because simply raising the question of who has authority for what decisions can sometimes be interpreted as a challenge to those who have actually taken responsibility. Families typically avoid potentially difficult conversations, fearing that such conversations will upset family harmony. As a result, the dynamics described above occur, causing tension in the family, leading to factions, competition, infringement on rights, etc., and may not be identified as a consequence of systemic uncertainty, but instead become private, personalized, unspoken, with blame targeted toward individuals rather than to the dynamics in the system as a whole. This can lead to resentments and underlying conflict in the family — exactly the opposite of what is intended by the avoidance of the matter in the first place!

2. State What's Certain

One way to approach this dilemma is to view needed conversations as educational efforts whose goal is to truly understand what was intended by the way in which transfer of ownership has been structured. Meetings with attorneys who set up the structures are helpful in this educational process. Voting and nonvoting shares may have been created so that only those holding voting shares have a right to make certain decisions; or shares may have been transferred in trust so that only certain trustees have the right to make certain decisions; or a majority of shares may have been transferred to some parties, while others received minority ownership. In each of these cases, it is useful to articulate the kinds of decision authorities that are governed by the ownership structures: What specific authority does this structure provide? It helps to be very clear about the specific rights that are conferred by the ownership structures. For example, equally shared interests in a family foundation might mean that all parties have a say in how foundation funds are distributed; but individuals will still retain the right to make donations on their own, even if those donations are made with the same family name.

Some parties may hesitate to state what is certain, out of concern that such clarity might be more disruptive of the group. For example, granddad might hesitate to state outright that he is the ultimate decision-maker, regardless of how ownership has been transferred, because he is concerned that this will demoralize his grandchildren. Similarly, establishing a greater level of certainty among owners could threaten some parties who have otherwise benefitted from the lack of alignment among owners.

While these conversations may be difficult for family members because they could reveal differences that previously had not been realized, if the goal is a unified and functional ownership group, it is in the best interests of the owners as a whole to clarify where things actually stand. The systemic certainty resulting from such clarity will be beneficial in the long term.

3. Clarify Who Gets to Participate

Even when legal structures dictate who gets to make which decisions, who actually gets to participate is not always clear and can be a source of uncertainty. As noted above, families often invite input from parties not legally entitled to decide but whose input may be valued. (e.g., What values should guide our charitable giving?) Families also make decisions about matters that are not at all dictated by legal structures such as who should serve on their family council. Therefore, productive discussion in a family, in addition to what is actually dictated by ownership structures, should focus on who has a right to participate in which decisions: Whose opinion is welcome (e.g., only shareholders or all adult family?); whose opinions will be considered in making decisions (e.g., only those holding voting shares or all shareholders?); and who will actually decide.

It is important to have these conversations when initially faced with a matter that needs to be addressed. In all cases, it would be helpful to consider the types of experience, talent, skill, education, or engagement that might be necessary for someone to have a say in family matters and in business matters.

4. Decide on a Decision Process

Along with an understanding of ownership structures, and clarification of who gets to participate in which decision matters, systemic uncertainty should be addressed by deciding how group decisions will be made: By majority vote? Super majority? Unanimity? Consensus? It is a good idea to establish a decision process early on, as an ownership group develops.

Whatever the process decided upon, it is important to stick to the process agreed to. I have observed systemic uncertainty come sweeping back into a previously well-managed system when family members forget or purposely abandon a decision process they had previously agreed to.

5. Establish Yours, Mine and Ours

Finally, family ownership groups should build an awareness of the importance of establishing "Yours, Mine and Ours." This is not a matter that will always be of concern, but from time to time, families will be drawn into taking responsibility and making decisions about issues that have nothing to do with ownership of financial assets. Uncertainty in the family will be reduced by first having an open discussion about which matters are legitimately family

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"THE LAW DEALS WITH CHILD LABOR, NOT CHILD MANAGEMENT."

The Birds Always Sing After the Rain

By Joe Schmieder

Do you remember the Y2K crisis? During the final years of the 1990s there was such concern over the "embedded computer software" switchover to year 2000 that people spent billions of dollars on capital goods to prepare for this transition. Surprise, there was no catastrophe. The vast majority of systems transitioned smoothly.

All that capital spent on technology and office support in the years leading up to 2000 led to an abrupt spending decline on office-related goods. A devastating 40% drop in revenues over an 18-month period revealed the house of card models of many upstart technology companies, leading to the very painful bursting of the tech bubble. This rapid fall-off in technology companies affected other sectors of the economy, like commercial real estate and office furniture. While it did not affect the entire economy, there are some important lessons to learn from that free fall experience.

Back in 2000, I found myself and the family company I was running, in the midst of this sudden and profound downturn. Many noncompetitive family businesses started to compare notes. We were all reading the same business articles and management guru books. But we could not get from 40,000 feet to the grass roots level of what actions to take.

We knew we had to strengthen our balance sheet and improve cash flow, but we did not know what actions would work best. Thus, "The List" was born. It started out as an itemization of actions to trim costs, stay competitive and still be prepared for the next uptick. Most of us brought our leadership teams together and worked the list for our specific situation. We would now all agree that it helped us weather that storm. Many of those same companies made record profits once the turn-around began.

Eight years later, the next storm turned into a category five hurricane. As a result, the list resurfaced. This time, with more social and business networks in place, we started to grow the list and categorize the actions. It is now referred to as "100 Action Thought Starters for Surviving a Severe Downturn."

It now has a life of its own, growing daily, as more people refine and add to it.

Sources for the list come mostly from family business leaders who run mid-size companies and are close to the operations. However, it also includes the more actionable concepts from management experts, like Tom Peters and Jack Welch.

Here are a couple items from each category.

General

1. Continuously estimate the depth (degree of severity) and length (timeline projection) of the downturn in your specific markets.

2. Make your calendar one of your most strategic documents by not only scheduling meetings, but also scheduling time for working on key issues impacting your performance in the downturn.

> We can learn and apply many actions now that will get us through this storm and be much stronger when conditions improve.

Family Leadership

3. Tap into the wisdom and experience of senior generation leaders who have likely experienced two or three downturns in their career.

4. Accelerate the range of responsibility for the younger generation, keeping in mind that some young people will rise to the occasion when tested.

People

5. List every benefit provided and quantify amount company provides each employee (health care insurance, vacation days, sick days, FICA, 401(k) match, etc.).

6. Lure your competitor's best talent.

Financial

7. Strengthen banker relationships. Meet with banker(s) and discuss current arrangements/covenants and other possible changes.

8. Improve order-to-cash cycle by sending out invoices as soon as possible, not waiting for end of week or other set time for batching.

Purchases

9. Audit inventory and reduce slow moving, obsolete items with special sale, return to vendor or dispose.

10. Defer capital expenditures. Purchase essentials (repair and maintenance) and invest in selective developments for new services, products and channels.

Manufacturing

11. Review Shingo Award assessment list (www.shingoprize.org) for areas of improvement to world-class status.

12. Eliminate the eight wastes of lean: overproduction, motion, inventory, waiting, transportation, defects, underutilized people and extra processing.

Facilities

13. Consolidate plants.

14. Increase use of energy efficient practices (e.g., replace expensive lighting).

Marketing

15. Use the digital world more for promotions — email blasts, website e-commerce, etc.

16. Do not stop marketing and selling efforts, but adjust approach.

Sales

17. Visit all major customers and thank them for their business, seek input on outlook, and discuss needs of your products, services and any opportunities.

18. Ask customers where your company can save their company money.

Pricing

19. Increase pricing if in niche markets with limited competition.

20. Implement an environmental surcharge (e.g., for trash, recycling, hazardous waste handling, green material usage, etc.).

Business Development

21. Analyze sales and profitability of each product offering and prune nonstrategic, low-profit products.

22. Seek lower-priced, fire-sale acquisition opportunities, particularly those where the seller may provide the financing or take an earn-out.

Office/Admin

23. Increase use of technology by moving quicker to online ordering, tracking and shipping.

24. Reduce the number of computer hardware and software license fees.

"A crisis is a terrible thing to waste," says Warren Buffet. We can learn and apply many actions now that will get us through this storm and be much stronger when conditions improve. Now is a time for deep leadership thinking and quick execution. Clinical studies demonstrate that the best antidote for depression is action. So instead of overly lamenting about our dire condition, the healthiest thing to do is to act. Hopefully, "The List" helps trigger you and your team to meaningful action.

And as the sun is sure to rise in the morning, so too will the birds be singing when this storm subsides.

Joe Schmieder is a principal of the Family Business Consulting Group, Inc., specializing in family business succession planning and strategic business planning.

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