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The Voting Control Dilemma

"What should I do with my voting control? I have developed an excellent estate plan to deal with my non-voting stock and to minimize my estate tax exposure. But now I am wondering if I should transfer or sell the voting stock to only those family members employed in management positions in the business, or if I should I transfer it equally to all of my adult children based on their equal ownership rather than their management roles?"

This dilemma confronts the senior generation in family-owned businesses repeatedly, especially when the operating company is their primary asset and the estate plan is structured to transfer 90% of the equity equally to all members of the next generation as well as their grandchildren through generation skipping trusts.

While there is no "right" answer to this dilemma, successful families-in-business shift this question to the **entire family** for resolution. To find a solution to this voting control dilemma, they create a "Family Council" that meets regularly throughout the year to begin an intra-family discussion on the future of the corporation.

As I have discussed in other articles and materials, the key to successful family business transitions rests with pro-active successors. The successors need a voice in the Family Council to develop recommendations for the senior generation to consider concerning the transfer of control. The successors need a voice in the future. The successors need a voice in the design of the transition plan. If the transition of the business is incompatible with the goals and needs of the next generation, conflict will emerge, and the business will be put at risk.

[See a short video on pro-active successors - http://www.deanfowler.com/media-interview.php]

Not all families come up with the same solution. For example, in one case the business is structured as a holding company that includes an operating company, real estate partnerships, and an equipment leasing company. Only one family member is currently active in the management of the business and this family member has shown exceptional talent as a leader and entrepreneur.

Through Family Council discussions - where the entire family provided input - the family determined to transfer both the control and all the equity of the major operating company to the active successor through a combination of sale and gift, but the other family members would continue as owners of the real estate partnership and leasing companies.

In another case, where 90% of the equity had already been gifted to the successor generation, the family decided that the voting control would be shared equally among the six siblings - three active in the business, and three not involved in the business. The rationale not only involved issues of fairness, but also was structured to give all of the shareholders a voice in protecting their investment in the business.

Of course this solution, involving multiple shareholders in a large family business, required the development of a new governance structure and a Board of Directors so that the inactive shareholders could not interfere with the day-to-day management of the business.

The transfer of the non-voting stock is usually driven by tax considerations. The transfer of voting control, in our judgment, needs to be driven by a family-wide discussion about the future needs of **both** the business and the family.

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