

## Triage: Conflict or Governance?

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**E**xperts pretty well agree on the choices family business owners need to consider in creating boards of directors, as well as in preparing family members to serve on them. A problem in my area of consulting is that governance structures and new blood are often most needed, right at the time when a business family is least ready to deliberate on those choices.

On my office shelf are half a dozen books with valuable sections on the choices to be made about boards' or councils' structure and composition: Advisory or fiduciary? How many members? If it's a business board, should it have any non-family members? Compensation? Spouses eligible, or only blood? Terms of service, how to select new members, and so on. The insights of John Ward, Ivan Lansberg, and John Davis about distinguishing among founder-controlled, sibling partnership, and cousin consortium boards are essential teaching. However, their intended reader is a member of, or adviser to, a family enterprise that is prudently addressing the ownership and management transition process some years before leadership is to pass. It's implied that members come to the task with basic trust and a reasonable time frame—many months, at least—over which to meet and deliberate thoughtfully.

What if a family that is starting a new board, council, or committee, or modifying their constitution or by-laws, or introducing a process for developing future board members, is in chronic conflict or has paralyzing emotional issues they're afraid to confront?

We can't say, "Put those questions about your board or council structure on the back burner until you've resolved your relationship problems." They may desperately need a clearly defined and well-functioning deliberative body *in order* to resolve those issues, or at least to segregate them from business consid-

erations. Yet this family is not in shape, interpersonally, to deliberate.

Fortunately, some of the steps in board formation and next generation preparation are more urgent than others. Those are the same steps that I've found most helpful in lowering the temperature of family conflict. This has happened whether the reason for addressing governance was a crisis such as the founder's unexpected death, or the business is successful and growing while the ownership is blocked by personal distrust or conflicts of interest.

As the authors of *Generation to Generation*<sup>\*</sup> say, creating a strong working board "is a process that often takes months or even years to complete. It should not be rushed." In tense family situations, I suggest starting slowly. Initially, concentrate on bringing all stakeholders to understand just the basic essentials about the board's or council's function and processes. Postpone having the members deliberate about the structure, composition, tasks, prerequisites, and prerogatives of a board.

Faced with high emotion and tense communications, I ask myself which steps toward governance in this particular family can be taken right away and which ones can wait for a well-functioning board or council? Is there a substantive topic that is relatively non-controversial, which will give them practice at airing and debating different views without making them despair of the process? I usually find myself starting with the why, what, and how questions:

**1. Why?** What is the principal function of this group and how does it fit in the larger diagram of family, business(es), holding company if any, committees, management, shareholders, trustees, etc. Most of the group has a clear understanding of all that,

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<sup>\*</sup> Gersick, Davis, Hampton, and Lansberg, 1997.

but not every member does. Shared understanding by all, *especially* the least experienced or least powerful, is crucial. Those members gain as much as I do from the time I take to chart all the pieces. This might be anywhere from half an hour to more than one meeting, with individual tutorials in between.

## **2. What (do we bring to the party?)**

What are the abilities and commitments needed from members of this body? This might be an interactive exercise, involving breakouts and discussion. Include the revelation that participation is voluntary. *If* one is eligible (or selected by vote from among those eligible), and *if* one chooses to be accept membership in the particular group, here is what will be expected. Further, it should be explicit that opting out doesn't mean losing one's other roles and rights in the family.

**3. How?** What are the formal rules for decision-making and moderated discussion, which we'll fall back upon whenever informal discussion deteriorates into interruptions or incivility? Chances are, some members have served on bigger, formal boards (business or non-profit), or may have held elective office in their community or state. Others, though, have had no direct experience with Robert's rules. They find the whole process of having to be recognized by the chair, of limiting discussion to motions on the table, and so forth, awkward. It may feel like a divisive barrier within the family. They may have grown up in a family where constant, competitive interrupting was standard conversational procedure; or the opposite, where disagreement was shameful. Therefore, even when we get to the stage of discussing detailed by-laws or grappling with a substantive matter, as long as I'm aware of conflicts under the surface, I'll urge them to practice Robert's rules for at least part of the meeting.

Those steps are worth investing as much time as required—a whole meeting or a series of meetings—to bring everyone on the same page before getting into the who, when, and where of governance, debating the constitution or by-laws, and filling the agenda with substantive matters. Steps 1 (“Why?”) and 2 (“What do we bring?”) are necessary for everyone to be clear about why they're in the room and which kinds of human capital the various members have to contribute at this time. Step 3 (“How”) is necessary to make the arena *safe* for rational discussions. I usually say something like, “Robert's rules are what you'll fall back on whenever informal discussion gets off track, as happens in any group of people, including the soundest of families.”

The idea is to avoid the pitfalls of asking a naïve group to consider alternative structures, board roles, constitutional provisions, etc. Focus on giving them experience with a process, within any structure (the simpler the better). They will update the structure as they become more confident and focused on their purpose as a board.

Recently, I was working with a family who were fighting about long-standing issues of entitlement, originating in their late father's attempts to dictate career choices, as well as from judgments he made about his sons-in-law. For a variety of reasons, their family-only board could never arrive at a consensus, terminating most debates with a 3-2 vote. Three of them usually backed the non-family CEO; the other two regularly voted nay. Bubbling beneath the surface was the fact that two of the seats in the gang of three were coming up for renewal or replacement. Those two argued that vacated seats should remain in their respective nuclear families (a spouse or adult child replacing each retiring member). In other words, election should always remain within branch rather than by all shareholders for each seat.

I had the feeling that this family would do better to choose directors on the basis of their

qualifications as perceived by all the shareholders. To say that, however, would have been to align myself with one faction against the other. So instead I said, “Eventually, as a family grows and a business grows, they usually need to make the best use of the whole family’s human capital, which isn’t guaranteed by one seat per branch. But it’s up to you to decide whether to be concerned about that now. Sooner or later, it will be an important matter for you to decide. My job is only to help you hear each other’s views about the pros and cons of each method, and choose one way or

another, for the present. Your process of doing that matters more, as a model for how you’ll function, than the consequences of the particular method you adopt this year.”

They came to a unanimous decision to keep the “one branch, one vote” board. But they got a good message, I think, contrary to their self-description as “dysfunctional”. I’m hoping they begin to say, “We’re a functioning family; we have the tools to evolve our governance as needed.” Some of them had feared that their partnership was on the verge of breaking up. My goal is for them to trust in themselves.

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