Woodbury: Farm Family Business
Advice for an Amicable Breakup

Lance Woodbury DTN Farm Business Adviser
Bio

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If you follow any of my past articles, you'll see that I seem predisposed to keeping the family business intact. Sometimes, however, it seems too difficult to keep it together. Family history, conflict between siblings or spouses, distrust among partners, or simply different goals in business and in life occasionally suggest that it may be time to divide the family enterprise.

Stay focused on collaborating with your partners during a business split. What you save in fees for attorneys, CPAs and unnecessary income taxes can help pay debt and rebuild the business. (DTN photo illustration by Nick Scalise)

Over the years, I've facilitated a number of business break-ups. I've also been called in after there has been significant damage done to both the business and the family, and an amicable split is impossible. While the discussions about dividing the business are never easy, there are some steps you can take to make the process less painful emotionally and financially.

The first step is to get the topic on the table with your business partners. Before proposing what the division should look like, or prior to contacting attorneys, or mentioning your intentions to neighbors, you should have the general discussion about a division among business partners. (It seems straightforward but can be an extremely difficult conversation.) When the neighborhood coffee shop crowd knows before some of the partners or family members that a business split is imminent, or if a letter comes from an attorney announcing one's intentions, the already-difficult discussion is made more challenging because of the resentment brewing from what feels like a public airing. No one wants to find out second-hand that their brother or business partner is ready to split the sheets.

The second step is to agree on the process you'll use to arrive at a division of the business. Too often the way the breakup gets initiated is by someone beginning the negotiations without an understanding that all the partners are ready to negotiate. One business partner will simply approach the other with a proposed allocation for a division of assets. And while it seems instinctual to jump right into what the division should look like, rushing into substantive negotiations without partners on the same page about the process puts people on the defensive and creates a guarded environment in which collaboration is less likely.

The process might be as simple as scheduling a series of meetings with your accountant to explore the division, or as complex as hiring a third party to design a process. In mediator parlance, this "talking about talks" actually helps to build some agreement and offers some positive momentum as you head into the actual negotiations. If you can agree on a process, there is some hope that you can agree on an allocation of assets and liabilities.

Once you've agreed on the process, you should talk about the use of professional advisers, specifically accountants. There are often significant tax issues involved in a wind-down of a business relationship, and if you can use your CPA who has the knowledge, history and whole-business perspective, you are more likely to arrive at an amicable split.

Over the years I've seen family members go get their own individual attorneys and CPAs and begin building a position before having the partner-first discussion referenced above. I've watched hundreds of thousands of dollars -- which could be used to pay down debt, improve the working capital position of the business or form the origin of a buyout -- go to attorneys or each party's new accountant. Remember, if you hire new advisers, you have to pay for them to become educated in order to make recommendations. With the complexity of multiple-entity operations and farm-program-payment issues, this education can be extensive.

On the other hand, if you approach your current team of professionals and ask them to work collaboratively, the chances are you will get as good a deal as you would have with new advisers -- probably better -- and save money along the way in both professional fees and from a tax perspective.

Finally, I encourage business partners to consider what each side needs in order to achieve agreement. Too many times, people come to the table with a hard position that is a best-case scenario. They have identified what they want versus what they need. They have the land picked out, the equipment identified, and their ideas formed about what they intend to walk away with.

Instead, the starting question for individual reflection in a family business split should be "What can I live with?" This question makes you identify what you really need in order to achieve resolution, and creates more flexibility in negotiations, as some of your "wants" can be used to negotiate. While you may not lead the discussion with this kind of bottom-line thinking, being clear in your own mind about your needs can create more options and better chances for resolution.

Mediators sometimes suggest that a good agreement in a business split is one in which no one is happy. If everyone gets what they can "live with," versus one party "winning" over another, there is a better chance for each partner to make a fresh start and for the family relationship to heal over time -- perhaps the most important outcomes of a family business split.

EDITOR'S NOTE: Lance Woodbury works as a consultant to family-owned and closely held businesses in Garden City, Kan., with a special emphasis on business planning, mediation and conflict resolution. He also maintains an interest in his family's western Kansas ranch. E-mail comments or suggestions for this column to lance@lancewoodbury.com.

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