



LEGACY LAW

Protecting the assets in your family tree

If you want a successful family team to continue, how do you get buy-in?

My name is Donal and I am a disappointment!

My Mum is passionate about bridge, my Dad was passionate about classical music and I am not passionate about either. Passion is not easily transferred, even to blood relatives.

The person who creates a business or builds something usually achieves that because it is a passion that can withstand bumps and knocks and they are driven to resiliently stick to their task. That is why they succeed while others do not.

Many lawyers and advisers draft Wills and Trusts and Shareholders Agreements for families that the clients are happy with. I hear it all the time from Family Offices and trusted advisers, “oh the family have done their succession documents. All sorted. Cost a fortune!” But I know from experience to ask, “is it really *all* sorted? Does everyone know their role, have the support to execute it, has there been a dress rehearsal with enough time before opening night to iron out glitches that only come out in testing?”

This is my passion. In trying to pass this on to my HSC studying son, I see how hard it is to transfer! I know your pain and challenge.

I also understand that, like most of our clients, you are busy building things and enjoying life and have other priorities. I want this priority to get just enough recognition as, without it, I have to tell you from my numerous litigation files, it is highly predictable that your succession could be a shambles. Has your adviser cautioned you about this even in the face of your peace of mind when signing documents? Is your trusted adviser enabling your, let’s be honest, complacency in this regard?



As we said in a recent article, to build a team that has esprit de corps, you need:

1. Buy-in; family members other than the patriarch and matriarch need to be seriously engaged for this to work as they will be asked to “live in the plan”;
2. Change approach; otherwise you get the same results as you have now and your legacy is still no closer to actually happening the way you want; and
3. Resources; as you know from life, you need support to do anything novel and results are quicker when you have the right coach.

LEGACY LAW PTY LIMITED

t 02 9188 3980 e dgriffin@legacylaw.com.au a Level 3, The Cooperage, 56 Bowman Street Pyrmont NSW 2009 | PO Box 68 Pyrmont NSW 2009 w www.legacylaw.com.au

ABN 58 600 167 959

Liability limited by a scheme approved under Professional Standards Legislation

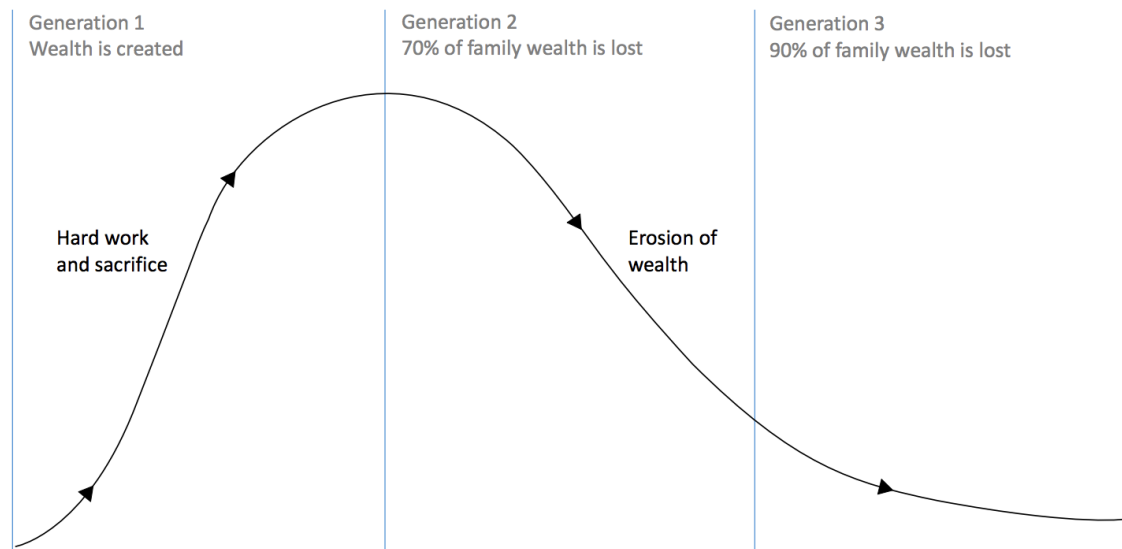


LEGACY LAW

Protecting the assets in your family tree

In this article, we will look at the first essential ingredient, buy-in.

We all know the proverb, “Shirtsleeves to shirtsleeves in three generations”. Williams and Preisser published the data on how and why this occurs and I used the below image in my book “Be A Better Ancestor – Build one of the Great Families”.



Source: *For Love & Money: A Comprehensive Guide to the Successful Generational Transfer of Wealth*, Roy O. Williams, 2010.

Jay Hughes shares some observations, with which we agree, in his book “Family – Compact among Generations” (at page 200): “The bell curve illustrates why I believe the development of the second generation is so critical. A family *must help* [my emphasis] its members to keep functioning somewhere on the right side of the bell curve if it is to have a future. It does that first by consistently helping to bring each new generation’s dreams to life and second by teaching its members to become dynamic steward-conservators”.

We will deal with the second part (teaching) in a later article. For now, to get people functioning you need to assess if they want to function and are able to function in the way that is desired.

Williams and Preissers’ research shows that the leading causes of transition failure include trust breakdown, communication breakdown, failure to prepare the next generation, and a lack of clarity of purpose for wealth. I suggest that if you properly address those causes by getting the key players to “buy-in” you substantially delay the erosion of wealth.

Hughes, who I am very fortunate to call a mentor, explains, “A family that has the foresight to see the risks of becoming average and can help its second generation be generative [an Erik Erikson concept worth exploring] by bringing its dreams to life – and, using that same process, keep every generation as generative as the second – will stay in the sweet spot in the middle of the right tail of the curve, the spot where I believe long-term success in avoiding the proverb’s prediction is achievable”.

LEGACY LAW PTY LIMITED

t 02 9188 3980 e dgriffin@legacylaw.com.au a Level 3, The Cooperage, 56 Bowman Street Pyrmont NSW 2009 | PO Box 68 Pyrmont NSW 2009 w www.legacylaw.com.au

ABN 58 600 167 959

Liability limited by a scheme approved under Professional Standards Legislation



LEGACY LAW

Protecting the assets in your family tree

We all want to bring our dreams to life and the dreams of another are of substantially less interest, even if we fake our fascination (sorry to those to whom I have faked interest!).

Slavery has been abolished and I advise my clients that people now want to be “individual”. In family systems, we look at the balance between individuality and a concept called “togetherness”. When they are out of balance, we tend to see symptoms which leads to a lack of harmony in the family. If explanations about a family plan or event or to be simply accepted without practical testing, it covers up cracks which are likely to reappear later.

Buy-in should be unanimous or the plan should be adapted until it is unanimously accepted by the key players. Who to include in this needs to be carefully considered in each family.

A culture of making decisions rather than voting is helpful. If there is a vote, someone may well lose and get the sense they are on the outer of a triangle (an important concept in family systems theory). The consequences of that can lead to lack of engagement and a sense of exclusion from future decisions.

Buy-in requires informed consent so a genuine information exchange process is important. This should not be rushed as accusations of pressure or even bullying can be levelled. Best practice we have seen includes the key players getting independent advice from lawyers who “get it” (and most do not) before signing any agreements.

Some people need more subtle independent support in order to “step up”. It could be a support figure from the same generation, sex or culture who can help the person ask the questions they need answered or learn the financial skills that may be necessary to better contribute. Lip service needs to be identified. In some “collective harmony cultures” and normal western “power” dynamics, no-one will dare talk truth to power. This has to all be genuine. The tide should lift all boats.

Sometimes there will not be a consensus. A desire for total financial independence (an exit) may be inconsistent with a desire to stay financially bound (for the sake of scale). I say “may be” as a compromise should be explored. A person may want to invest in something the family do not want or want to own separate assets with their nuclear family. Some financial independence can be contemplated so that people have “hobby” or “passion” investments which are not subject to the rigorous financial management that say business assets should be subject.

Assumptions and expectations need to be understood. Otherwise, we each have agreed to something different. Smoking out an issue is helpful because then it can be addressed. It also demonstrate equal bargaining power and gives observers confidence that if they have an issue it may well be addressed.

Good faith is extremely important. If someone believes there is bad faith with one party, it needs to be called out. Otherwise, it leads to the belief that the agreement is a sham.

Care must be taken to get off to a good start as buy-in may be compromised if the players believe there is a doubt that the organiser can deliver an agreement. We need to see that our main needs (not all our wants) will be acknowledged and most of them met. If we see that others on the same limb of the family tree are also compromising, consensus is easier to find.

LEGACY LAW PTY LIMITED

t 02 9188 3980 e dgriffin@legacylaw.com.au a Level 3, The Cooperage, 56 Bowman Street Pyrmont NSW 2009 | PO Box 68 Pyrmont NSW 2009 w www.legacylaw.com.au

ABN 58 600 167 959

Liability limited by a scheme approved under Professional Standards Legislation



LEGACY LAW

Protecting the assets in your family tree

So, let's start small to build confidence that experimenting with family discussions can be managed. Success may be everyone staying in the room until everyone contributes to a topic. We should feel a little more comfortable the next time we gather. We should acknowledge that it will not be perfect the first time (or ever) and that separate conversations should happen initially and to debrief after a gathering. Make haste slowly. The sooner we start the more time we have to tweak and improve.

And if we find that, after genuinely trying at least three times in different ways, ours is a family that cannot gather well, that is important information worth knowing and some work should now be done to plan for a financial separation in due course in a way that can preserve family relationships (ie agreeing on a valuer, terms, not going to Court, shared values, annual family gathering etc).

We see that the person who is least engaged can be the weak link in any family "agreement". They may be holding back thinking "I will say later that I was forced into this" if I want to avoid it. I call such agreements "pre-nups for families" as they may deal with a financial separation. As we know, pre-nups can be challenged if there is not proper disclosure.

Thomas Jefferson said "that government is the strongest of which every man feels himself a part". That might partly explain the current rise of political populism? I am not making a political comment here but we may need to recognise the lure of populism and bend it to our needs as a family. The end sometimes justifies the means as all successful business people know.

When we show leadership by acknowledging a mistake or weakness and the experiences of other people, they often appreciate that and become more open to changing previously tightly held positions. It is not just me that says this, family systems theory supports it.

Successful people do not like admitting that they are unsuccessful in an area such as this and resolve to quietly fix it. But, smart people know that we sometimes need an outsider to marshal us and get us to do uncomfortable things – like a personal trainer. Start and build up strength gradually. Don't let perfection get in the way of progress.

We all know the phrase, "if you want to go fast go alone but if you want to go far go together". The good news is it is a choice. Neither choice is wrong but a decision should be made in consultation with the family or you may not get anywhere.

As a writer of two books, I am disappointed to have used so many cliches in this article. You know they are cliches because ...

What small step into the world of unknowns are you going to take by the end of this month?

LEGACY LAW PTY LIMITED

t 02 9188 3980 e dgriffin@legacylaw.com.au a Level 3, The Cooperage, 56 Bowman Street Pyrmont NSW 2009 | PO Box 68 Pyrmont NSW 2009 w www.legacylaw.com.au

ABN 58 600 167 959

Liability limited by a scheme approved under Professional Standards Legislation