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What Do Sumner Redstone and Many NFL Owners Have in Common?

The answer to this question came to me last week as I was reading about the latest development in the Redstone family feud and the very sad tale of the current owner of the Denver Broncos, Pat Bowlen. For entirely different reasons, they both have gone to elaborate lengths to set up arrangements whereby the successor CEO of their family businesses will be designated by third parties (not family members) after they are declared incapacitated or die. Rather than address the succession issue head on, they have essentially punted and thrown their families into chaos. Let me elaborate.

Background

Sumner Redstone's family business is National Amusements, Inc., which owns, among other things, scores of movie theaters across the U.S., plus 79.9% of the voting control of two well-known, publicly traded media businesses, CBS and Viacom. Redstone currently owns 80% of National Amusements and his daughter, Shari, owns the remaining 20%. Shari, her father, various of her father's mistresses and the CEOs of Viacom and CBS have been in a very public battle for control of these assets for the last five years. Despite being in a near vegetative state during all of this, Redstone remains CEO of National Amusements. Shari covets her father's job title and power.

Redstone has famously said on more than one occasion that he has never done any business succession planning "because I plan to live forever." For many years, he also made it known that he would never allow Shari to be his successor. Redstone is 95 years old and Shari is 64.

Many years ago, Redstone established an irrevocable voting trust to hold his interest in National Amusements—the trust will exercise all the powers of ownership when he is declared incapacitated or dies. Under the terms of the trust, the trustees (seven of them) will act as the "owner" of the company. Five of the original trustees are business associates of Redstone, plus Shari and one of her sons. The beneficiaries of the trust are Redstone's five grandchildren from Shari and her estranged brother, Brent.

Pat Bowlen is the owner of the Denver Broncos. In 2007, concerned about his family history of Alzheimer's, he established a trust for the purpose of naming the successor "controlling owner" of the Broncos at such time that he was declared incapacitated or died, as required under the NFL franchise agreement. The trustees of the trust, three business associates of Bowlen, also have the power to sell the team if they deem it advisable.

In 2013, Pat, suffering from Alzheimer's, became incapacitated and the trust became controlling owner of the Broncos. Bowlen has seven children from two marriages and, based on what has been publicly disclosed, will leave the ownership in the team equally divided among them. The trust will

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stay in effect until Pat Bowlen dies. The children have never seen their father's estate or succession plan documentation.

Redstone and Bowlen have both used a trust vehicle to assure the important job of naming a successor CEO once they are no longer able to name a successor. Redstone did this to prevent any of his off-spring from ever taking the leadership reins of the media empire he built. In the case of Bowlen, the trust will act as owner until such time that a qualified family member can take over. The trust establishes criteria that must be met before a family member is designated as controlling owner.

Current Situation

Each of these plans is now mired in protracted litigation seeking to “undo” the plans of these billionaire owners. Shari has successfully forced the resignation or removal of a majority of the trustees of her father's trust and now stands to take charge of the trust once her dad dies. The two branches of the Bowlen family have recently initiated litigation to declare the trust he established void and/or to remove the trustees. In addition, each family branch has offered up a family member to serve as the controlling owner. The trustees have rejected both candidates, saying that they have not met the position criteria established by the trust.

These situations give rise to the question “Can you have a family business with no family member at the helm?” The answer is, of course you can—but it is hardly an ideal situation and often leads, as in each case here, to litigation by the heirs to set aside their father's plans. Eliminating your kids from the succession chain, as in the case of Redstone, is a bitter pill to swallow. Delegating the succession question to non-family business associates (who often have conflicts of interest of their own) is also unsettling to the heirs. Not exactly a vote of confidence from their father.

The most recent article (12/14/18) in the New York Times about the Bowlen succession dispute made the point that “the NFL is no stranger to familial fights over franchises”. Some of the examples they cited are:

- In 2014, the owner of the New Orleans Saints disowned his daughter and two children, who then tried to have him declared mentally incompetent. He survived the challenge and his third wife took over the team after he died in 2018.
- The owner of the Tennessee Titans left the team to his two daughters and a daughter-in-law and her two sons, without one party getting control. A fight for control followed and only was resolved once the NFL intervened and threatened the parties with loss of the franchise.
- When the owner of the Miami Dolphins died in 1990, he named three of his nine children to run the team, leading to a bitter dispute. The team was eventually sold when the children were hit with a \$47 million estate tax bill.

Conclusion

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Redstone and many NFL owners have a lot in common. They are all billionaires and have large egos. They have had a lot of marriages. They abdicated their personal responsibility and duty to plan for succession and took a pass on the important task of communicating their wishes to their heirs. Efforts to shift that responsibility to someone else have largely been unsuccessful and inflicted a lot of damage on their families.

Family business owners underestimate the hurt and angst that comes from not addressing succession issues well in advance of the time for passing the leadership torch. Heirs are left to wonder what their father (or parents) really thought of them. Picking a successor is not easy and involves making choices among heirs—not a pleasant task, but better than the alternative. If the owner can't plan for an orderly succession, maybe the sale of the family business is an option that should be seriously considered.

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