Family businesses measure success in various and sometimes conflicting ways. Growth in revenue, market share, and product success are on one side of the seesaw; long-term family financial success and multigenerational participation are on the other. One of the great challenges is balancing these elements to create business success without sacrificing family-oriented goals.

“Context conflict” embodies the issue; it arises when a business operates with relationships that have different needs and values. In the world of the Family Enterprise, this is all too common a refrain. The tension between family and business interests is reminiscent of managing an identity on social networks: how do you deliver messages to different audiences?

It is also a critical legal matter. Company owners have a fiduciary obligation to maximize the company’s economic value. This commitment may be rattled if, for instance, owners receive an outsized offer to purchase the company that does not fit the family’s long term vision. In order to decline an offer that would bring greater value than the company is worth, owners must have legal provisions that allow them to vote “nay” if that better maintains the family’s vision. Otherwise, they can bid a bittersweet goodbye to the Family Enterprise.

The flexibility to prioritize family goals – whether financial or cultural – must be established by building provisions into the legal structure of the company and the family trust vehicles. Only with these in place can the family maintain true ownership of the values and direction of the enterprise.

Owners should consider three areas to solidify control of the organization: corporate documents, language in the family trust, and the culture of the company itself.

**Corporate documents**

It seems like a basic step, but is often overlooked when drafting shareholder agreements or Articles of Organizations (for corporations) and Operating Agreements (for LLCs). Shareholders can include
specific language that permits Boards of Directors or Managers to prioritize factors beyond economic return. This creates immediate flexibility to customize the goals of the business and empower the family to make decisions that support their long term interests.

The language can be as open or specific as the shareholders decide, although a middle ground is likely the best place to land. One effective route is to identify the highest priority goals, such as preserving family ownership, preserving the composition of stakeholders, or preserving independence.

Times change and so do family concerns. Too much specificity can handcuff the company down the line. The structures must be organic and able to adapt to change. Owners may, however, want to add language that keeps the guidance framed around family, charitable causes, or community ties; these themes are easier to explain to shareholders or to the courts, if necessary.

Broad and liberal provisions also can be interpreted by the shareholders to fit the times and dynamics of the family. Owners that try to predict – or restrict – the behavior of subsequent generations are likely to see their efforts backfire.

In the event that ideals shift and owners want to make a change, the corporate documents can set guidelines around the number of votes necessary to edit or strike the provisions. They can establish the need for a majority consent all the way up to a unanimous vote, although unanimity means that a sole vote can veto an important amendment.

**Trust & estate integration**

For any family owned business, trusts will be included as part of the estate plan. And by definition, trustees have the same conundrum as a Board of Directors: absent direct instruction to do otherwise, they are obligated to maximize the economic value for beneficiaries – even if it conflicts with family non-economic goals and values.

In a family business, then, corporate documents and trust provisions should be closely linked. Trusts routinely own a piece of the business, and the same voting guidelines that help steer the company must be in place for trust management. Trustees can and should be allowed to balance their fiduciary duty to grow the assets of the trust in a way that aligns with family requirements and mission.

As a matter of course, estate planning attorneys who establish a trust for a family that owns a company must be familiar with the corporate documents in order to effectively tailor trust vehicles. The trust not only carries the message of balancing family and financial interests, it also bridges the gap between corporate assets and the family.
It is critical to ensure that corporate and estate planning attorneys are communicating on these and other matters. Surprisingly, the two sets of advisors do not often synchronize.

The consequences of being on different pages, however, can be dire. In one case, for example, a family that owned a second-generation business followed its estate planner's guidance to leave much of their wealth, including heavy voting shares, to private foundations -- the one entity that cannot override the fiduciary obligation to maximize economic value. Because its beneficiaries are charities, a foundation has a fixed obligation to both maximize and diversify assets. A foundation that owns shares of a family business would likely be forced to sell the company to comply with the law. Estate planners and corporate attorneys can achieve better results with open lines of communication that identify the best legal structures for a family's needs.

Fortunately, even families with company shares held by irrevocable trusts may have recourse to make a change, should the trusts be incompatible with their goals. Many states have enacted the Uniform Trust Code, which allows for some options. Of those states, a few have established themselves as more trust-friendly than others, such as New Hampshire, Delaware, Nevada and Alaska. As this continues to evolve, a "go-to" state may emerge that is the perfect legal climate in which to site a trust, much like Delaware is widely considered the best port of call for forming a business.

Maintaining culture

Perhaps the most deeply ingrained distinctions of a Family Enterprise are the roles it plays in the family and the way in which personal goals contribute to corporate culture. With that in mind, owners must strike a delicate balance between maintaining family values, long-term vision, and profitability.

Tactically, families will do best to begin with three crucial questions:
- Who is the family?
- What are the missions of the family and the business?
- What is the core business, and into which industries can it successfully diversify?

The answers are different for every family and require thorough investigation, consideration, and consultation from trusted advisors. Goals should be reviewed at least annually in a structured forum – this is not Thanksgiving table conversation, but is more suited to a conference room with facilitators that can guide the discussion.

Of course, identifying these guideposts is just the beginning. Hard-wiring the mission statement into corporate documents is a start, but owners must then build the culture to reflect and support
the family’s values. Unless they are fully on board, participants are likely to grow skeptical of moves that prioritize culture over financial value. Over time, this can lead to a rift that will make it difficult for companies to succeed. Indeed, a consistent commitment to culture is paramount for any company.

Culture is an element of the Enterprise that cannot be purchased, forced, or wished into effectiveness. It must be fostered continuously and grown organically, with open communication and support from the ownership level down through the ranks. While there are myriad approaches for building an effective culture and generations-long value, we investigate some aspects of family-oriented strategy in another discussion paper, *Fueling the Family Enterprise: What Family Businesses Gain by Embracing Diversification*.

Marriott International is a well-known case study for effectively maintaining culture. As *The Economist* noted in 2013, Bill Marriott “sums [the culture] up as, ‘Take good care of your employees and they’ll take good care of the customer—and the customer will come back.’ He says this approach ‘overrides the technology and the design of the room and the design of the hotel.’ An approach to hotel management that explicitly focuses on the employee rather than on the customer sounds unusual. But it clearly works: Marriott’s burgeoning portfolio of over 3,800 properties is testament to that.” [i]

Family business owners begin their adventures balancing two priorities: keeping the business as an integral part of an ever-expanding family and creating a profitable, sustainable organization. In the end, family is the guiding force behind the company’s success; maximizing value for the next generation is sometimes more important than maximizing economic value in the present. Creating the right legal foundation will allow owners to put family first when it matters most.

Endnotes