FINANCIAL REVIEW

Wealth Personal Finance Succession planning

7 lessons wealthy families can learn from the Murdochs

The fight for control of the family's trust and fortune illustrates how not to do intergenerational wealth transfer.

The Murdoch siblings have reached a financial agreement, but can their relationships recover? **Bethany Rae**

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When Rupert Murdoch and his second wife, Anna dePeyster, divorced in 1999, she insisted he set up a family trust. She wanted to protect the financial interests of her three children – Elisabeth, Lachlan and James Murdoch (and their half-sibling from Rupert's first marriage, Prudence MacLeod) – against any children Murdoch had with his new wife Wendi Deng.

What dePeyster didn't foresee is that the sibling they would actually need protection from – Lachlan – was already inside the tent.

After brewing for 15 years, the saga came to a head this time last year when Rupert and Lachlan launched a failed bid to change the terms of the Murdoch Family Trust to increase their control. There had been a series of public disagreements over the direction of the family media businesses.

As the case settled out of court this week, Donal Griffin, director of Sydney-based Legacy Law, observed that "while it has been entertaining to follow in the media, it is also good to see adults settle their issues between themselves".

Discretionary family trusts such as the one at issue here are frequently at the centre of plans by wealthy families to manage and transfer intergenerational wealth. Griffin says while these are good structures for a couple, they are "much harder for adult children to share".

"The reasons for the difficulties include the often radically different financial positions and trajectories of the children at the time the parents die and the fact they have not shared an asset since a family pet, toy or game."

This can be especially difficult if there are a number of siblings involved (and as in this case, half-siblings, or often, step-siblings, too).

In the Murdochs' case, Rupert had retained the right to change the terms of the trust, providing any changes were in the best interests of its beneficiaries. He proposed to do so to increase the control he and Lachlan had over the trust, but his proposal was rejected by Prudence, Elisabeth and James, who took legal action.

The US probate court commissioner who heard the case sided with the three siblings, ruling that the plan was a "carefully crafted charade" to "permanently cement Lachlan Murdoch's executive roles" ... "regardless of the impacts such control would have over the companies or the beneficiaries" of the family trust.

"The effort was an attempt to stack the deck in Lachlan Murdoch's favour after Rupert Murdoch's passing so that his succession would be immutable.

"The court, after considering the facts of this case in the light of the law, sees the cards for what they are and concludes this raw deal will not, over the signature of this probate commissioner, prevail."

Even though the trust in question was a US trust, it highlights that "trusts are flexible, but they're not as flexible as people think, and you might be in a position where you need a whole group of people to agree on a change", says Christine Fleer, a partner in Arnold Bloch Leibler's private clients practice.

The Murdochs' tussle over succession has played out in a public and messy way that most wealthy families would hope to avoid. **Bethany Rae**

While few intergenerational wealth transfers involve as many zeros as the Murdochs, they are far from the only family grappling with the issue of how to pass on wealth, a business or both while maintaining family harmony.

So, what lessons can we take from the Murdochs on how to successfully transition from one generation to the next?

The Murdoch mess – and resolution

The resolution to this case will see the Murdoch Family Trust – which owned the family's substantial stake in News Corporation and Fox Corporation – dissolved.

For Rupert and his chosen successor, Lachlan, this was essential because the trust gave one vote to each sibling and four to Rupert.

As long as he remained alive and aligned with Lachlan, the two of them had control of the trust; but Rupert's votes would die with him so that after his death, Prudence, Elisabeth and James – who hold more moderate views than their father and brother – would have been in a position to collectively vote Lachlan out of control of the companies.

Alternatively, the dissenting siblings could have waited until the trust expired in 2030 and sold their shares on the open market – a move likely to have seen the family lose control of its empire.

Neither alternative was palatable for 94-year-old Rupert, who was eager to secure his legacy.

Under the terms of the settlement a series of new trusts are created – one each for Prudence, Elisabeth and James, who will each receive $US1.1 billion ($1.67 billion) from a selldown of the company's shareholding, and one each for Lachlan, Grace and Chloe (Murdoch's daughters with Deng), which will own the Murdoch family's remaining Fox and News Corp shares in a holding company controlled by Lachlan.

In effect, it means Prudence, Elisabeth and James have been given a cash settlement valued at about 80 per cent of what their stakes in the business were worth – more than an earlier buyout offer from Lachlan that was worth just 60 per cent of the value of their shareholdings.

In return, they have agreed to sell down any stakes in the company they hold personally and not buy in again in the future, giving them no future ownership of, or involvement in, the family businesses.

It brings a close to the fraught matter, but whether it heals the deep rifts in the family that have formed over a number of years remains to be seen.

Trial records from the failed bid to change the trust reveal that dePeyster wrote to Rupert urging him to find a resolution. "Some toes will be trod on and egos hurt but it would be worse to leave things as they are," she reportedly wrote.

Lessons from one of Australia's richest families

Griffin, the author of *Be a Better Ancestor*, says whether the assets in question are worth many billions – as is the case with the Murdochs – or are more modest, such as the family home, a holiday house, or a small business – neglecting or delaying the issue of succession is more likely to raise hostilities and affect family dynamics.

"It can bring people to the end of their tether to the point where, in the face of their requests for information or action being ignored, they feel they have no option but to engage lawyers who may only know the path to court," he says.

Jeff Steiner, partner and head of family office at multifamily office manager Mutual Trust, says many wealthy families ignore succession planning, but do so at their peril.

"If they have the right strategy and succession plan and communicate, be transparent and really be aligned around that from the outset, it can unlock some great success, and family members are better off for it," he says.

Families grappling with the division of shared assets might want to heed the following seven lessons.

1. Plan ahead ... and keep talking

Jeff Garrett, the head of business and commercial law and legal practice director at Attwood Marshall, says succession conversations must occur well ahead of the time when assets or control will pass.

"The biggest missing piece in all of this is that the business runs, time goes on, the business grows, it increases in value and complexity, but there's never a discussion around succession," he says.

Even if "interfamily jealousies and sibling rivalry going way back to childhood can come into play, you have to have those discussions".

However, families shouldn't necessarily consider succession talks as a one-and-done scenario, and Mutual Trust's Steiner refers to them as a "living document".

As the family evolves through marriages, divorces, remarriages and a third generation reaching adulthood, and as family member plans, aspirations and goals change, succession plans may need to be revisited.

"Structures don't remain as appropriate for as long as people think. Decades go on, things change, and you need to be revisiting your structures and thinking, are they still fit for the next 10 years?" Fleer adds.

2. Consider the pros and cons of a court resolution

If an agreement everyone is happy with is difficult to reach, families should try to find a solution in mediation rather than in the courts, Griffin says.

Not only does this prevent the airing of the family's dirty laundry in public, it reduces the amount lost to legal fees.

"It is much better for the parties to resolve any dispute privately and with their advisers so that the pie is not reduced by solicitors and barristers' fees," Griffin says. "Some costs are also avoidable if assets can be restructured rather than sold."

Prudence, Elisabeth and James Murdoch arrive at a Reno, Nevada probate court a year ago. **The New York Times**

But if reaching an agreement is proving difficult, legal proceedings can "be a good mechanism in some situations to accelerate the discussions", Fleer says.

"The courts are there to help us solve these intractable problems, so I wouldn't always see [a resolution in] court as a failure in a family business because sometimes that gets them to a good result."

3. Control the sale of assets

If assets need to be sold to divide money between family members, it is better for all parties financially if fire sales can be avoided, and sales can be timed to occur during good market conditions to maximise prices.

Christine Fleer says court proceedings can help families break deadlocks, but they are a "blunt instrument".

Griffin says this is another reason to keep disputes out of courts, which can order the immediate sale of assets. "It can be damaging for relationships if one successful child has deeper pockets and can buy a legacy holiday home at auction (or before) and exclude who he wants," he says.

Fleer agrees court orders tend to be a very blunt instrument in separating family assets.

"While I don't think people should think of court as a failure, you would still always prioritise a mediated outcome because you get the flexibility about terms and structure and timing and ensure that it can be managed to maximise value for everybody," Fleer says.

4. Prioritise family harmony

In many cases, succession is not solely about the money. It's a time when long-standing jealousies or childhood disappointments can surface, and Griffin says family divisions created by succession can carry on through numerous generations.

Given the potential for succession to create extended family conflicts, it may be necessary to give ground on the finances for the sake of keeping the peace, Fleer says.

This may necessitate the selling of assets in order to divide them. "Many families will prioritise keeping the assets together to the detriment of family harmony."

5. Consider a sibling pre-nup

Given how predictable a dispute among family members can be when long-held emotional assets are being transferred, Griffin says families should consider a "pre-nup for siblings".

Known in Australia as financial agreements, he says it is better for siblings to agree on who will value the assets, as well as the basis for any discounts, delayed payments or sales processes when they are on good terms and not when they are at odds.

6. Separate the business from the money if needed

If some siblings are working in the family business and others are simply shareholders, the succession of both control and wealth can be more complex, Fleer says.

"It's very hard to execute successfully where you've got one sibling running the business and the other siblings are shareholders because they'll have different views on the business," she says.

Even in cases where more than one sibling (or all of them) work in the business, its unlikely they will have made equal contributions to it, she adds.

In cases where siblings can't agree on the direction of the business, it may be better to try to separate the wealth from the business. In cases where the two are inextricably linked, a sale may be required.

7. Don't assume equality

Garrett says the "normal assumption" that all siblings should receive an equal share of a family's business or wealth is "one of the biggest myths" in succession planning.

It's also not recognised by the court, which is more likely to consider each sibling's financial position if they are making a ruling on dividing assets, he says.

Griffin says this notion of equality can be complicated if not all siblings are working in the family business or if those that are doing so are earning a salary that is less than market rate. "It can lead to resentment and the family employee being fragile or touchy," he says.

Promises that they will be compensated with a higher stake in the business when ownership passes may not have been made known in the family and documented in writing, which can complicate matters at the point of succession.

Griffin says such claims for promissory estoppel and breach of promise that are not backed up by appropriate documents leave families in an uncertain position that can often only be resolved in court.