Fair Doesn't Always Mean Equal

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owners may need to choose what's more important to them - being fair or being equal - when structuring the transition of a family business

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When it comes to family, we all generally try to be fair and treat everyone equally. But finding a balance between what's fair and what's equal may be impossible when it comes time to pass the family business on to the next generation. Depending on the context, what's equal may not be fair, and what's fair may not be equal. Consider a situation where only one heir is involved in the family business. Leaving the business to that single heir could mean unequal inheritances—while giving all heirs an equal share despite only one being involved would hardly be fair. Fortunately, there are estate planning strategies that can help identify a solution that is as fair and equal as you want.

Consider the following scenario...

Let's look at the hypothetical case of John and Madelyn Gibson, owners of the family's $10 million construction business. They are engaging in estate and succession planning, and want to pass shares of their company to their heirs to help minimize estate taxes. Their oldest son, Sam, has worked his entire career at the family business while their other two children, Peter and Mary, work elsewhere. They want to be fair to Sam, which rules out giving each child a third of the business. They also want the value of each child's inheritance to be equal. But with $5 million in assets outside of the business, the couple isn't sure how they can be both fair and equal.

In this case, they have a few options to choose from, including:

- **Life insurance:** John and Madelyn can use their assets to purchase life insurance policies, naming Peter and Mary as beneficiaries. The value of those policies would offset the value of the business shares they gift Sam.
- **Real estate:** They can give Sam the family business itself, but give Peter and Mary the property and real estate where the business operates.
- **Voting shares:** They can gift voting shares to Sam while gifting nonvoting shares to Peter and Mary—this solution is less fair, however, since Sam is still working to benefit his siblings. Nevertheless, it does leave control of the company to Sam.

Clarify your priorities

Once you have a solution that balances fairness and equality for your heirs, spell out the terms of your plan as clearly as possible. For instance, if you opt for the real estate solution above, you'll want to put in writing all of the plan's details, including whether the business heir will pay rent to real estate heirs, and if so, what those rental terms will be. Then present the plan to all family members and get their feedback. Doing so gives you a chance to explain your decisions while you're still alive, and potentially defuse and address any misunderstandings or hurt feelings.

There are bound to be tradeoffs to any estate and succession plan you choose, so it's important to be clear on your priorities. It's also important to properly integrate your solution with your broader financial plan. The best solution will be the one that helps you maintain family harmony, minimize your estate taxes and do right by your company. By recognizing that fair isn't always equal, and by fitting that idea into your broader financial plan, you can help ensure a positive future for both your business and the next generation of your family.