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Planning for catastrophe

What happens to a family business when the founder dies unexpectedly?

Vice president Sue Chewing-Bartlett says P.J. Gaier's death at BEX Logistics and Driver Leasing Inc. remains the way he left it.



by Joan Hennessy

One Friday evening two years ago, Sue Chewing-Bartlett told her boss about the death of a friend. She planned to attend the funeral the next day, making her late for the company picnic.

Her boss, P.J. Gaier, told her he understood. But as he left the office, he made a comment that would come back to haunt her.

"He said, 'Live every day like it's your last,'" Chewing-Bartlett remembers.

The next day, Gaier, an exercise enthusiast who competed in marathons and triathlons, was riding his bicycle home after a training session when he suffered a heart attack and died. He was 41 years old.

Gaier was the founder and emotional center of BEX Logistics and Driver Leasing Inc. in Richmond. He had started the company as a messenger service in the 1980s when he owned little more than a bicycle and a white Honda Civic. Since then, BEX had grown into an up-and-coming enterprise with 80 employees, a fleet of trucks and a Midwest office in Ohio, manned by Gaier's brother, Tim.

"It was a stunner. Shock. Disbelief. You pick the adjective, and that's how it hit us," says Tim Gaier, remembering his brother's death on July 31, 2004. Dark days, weeks

and months followed. "It was a punch in the gut."

BEX Logistics survived, largely because P.J. Gaier believed in planning. In fact, the Gaier brothers and Chewing-Bartlett, the firm's vice president, were mapping out goals when P.J. Gaier died. Unlike

many entrepreneurs, he realized the necessity of planning for the future as a hedge against catastrophe, such as his own death.

Many family businesses aren't as prepared. With no clear leadership plan, a sudden death can threaten a company's ability to survive. "Small businesses are risky in the best of places. They need constant care and attention," says Ben English, a partner with Richmond law firm Hirschler Fleischer. If a company founder dies suddenly, taking to the grave most of the institutional knowledge, trouble can erupt even with a will in place.

"I think many businesses, once they are established ... all they want to do is get their money and get their product and get their sales up," says David Woods, president of the Life and Health Insurance Foundation for Education, based in Washington, D.C. "Somewhere five, seven, 10 years in, most business owners begin to think" about succession planning, he says.

There is an evolutionary awareness of questions about a company's future, he says: What happens when I die? Who is going to run the business? Can it maintain its value?

In a sense, these are micro matters — questions pondered at scores of mom-and-pop businesses nationwide. But small businesses have a major impact on the national economy.

Family businesses account for an estimated 80 to 90 percent of all business enterprises in North America, according to the Family Business Review, a publication of the Family Firm Institute in Boston. These businesses contribute about \$5.9 trillion to the national gross domestic product and employ 62 percent of the U.S. work force.

But some entrepreneurs find themselves with no family member interested in carrying on the business. Others simply don't make plans to pass the business on, leaving survivors to haggle over the details. Only a third of all family-owned businesses survive into the second generation, according to the Family Business Review.

"You have to treat succession as a process. It is something you are working on," says Chuck Gallagher, director of the Virginia Family & Private Business Forum at Virginia Commonwealth University. "Family businesses that go from one generation to the next have a written strategic plan; an outside board of directors or advisers, which gives the company objectivity; and have, on a regular basis, family

Gaier, a competitor in marathons and triathlons, died of a heart attack in 2004.

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meetings. They are communicating with each other, discussing what the expectations are for the business and sharing views on the ownership of the business."

In some respects, it is like making a will, English says. "The whole estate planning process goes hand-in-hand when you are talking about a family business."

Yet it is also more complex than making a will. "It's about tax planning; it's about management issues for the company," English observes. "We view ourselves as the quarterback that coordinates that process."

Smooth sailing

The strategic plan is important, Gallagher says. "What you are doing is setting the course for the future of that company. You are establishing goals in terms of profits and sales. You are talking to everyone involved. ... It's a vision, and it's in writing. Everyone knows who is going to be in charge."

Identifying a leader is essential, says Beau Price, a Virginia Beach consultant whose firm is called Family Business Advisors. "Pass it on to someone who wants to run it and is capable of running it and not the three other brothers or sisters off painting pictures. You've got to go with the best leadership you have. If you divide control, it's almost assured that the business could get into trouble easily."

There may be examples of democracy in one generation of a business, Price says. But he adds that eventually "somebody has to run the dadgum thing."

Franco Ambrogi is considering long-term plans for his company, Franco's Fine Clothier in Richmond. A tailor, Ambrogi left Italy in 1956, coming to Richmond to live with an uncle. He was only 16, but he was ambitious. By the 1970s, he and his wife had opened a clothing store, which eventually expanded to three locations. "I do not want to retire," says Ambrogi, now 66 years old. "But I would like to turn over my business to the next generation probably within the next couple of years."

His family is deciding the best course of action. "Basically, whoever takes over the business changes it to their own style. You have to do that," says Ambrogi, who has a daughter and two sons. "But you should not forget the fundamentals that made the business great. Give the service and the quality and time and talent to the business

Franco Ambrogi is considering long-term plans for his company, Franco's Fine Clothier in Richmond.



that needs to be given."

Along with setting priorities and forming a strategic plan, business owners may want to consider insurance policies aimed at helping businesses survive.



Woods

Family business owners with partners should study a possible buy-sell agreement, says Woods of the Life and Health Insurance Foundation for Education. The first step is that the two partners must come to an agreement.

"I say, if something happens to you, I will buy your interest," Woods says.

Often, attorneys are involved in hammering that agreement out. It may be that the partner's spouse or next-of-kin doesn't want the business. "With groups of physicians or attorneys, their spouses aren't [in most cases] licensed physicians or attorneys. They can't have an ownership interest. They are not licensed," points out Rod K. Sutherland, an attorney in Virginia Beach whose practice includes business succession consultation, estate planning and business planning. "The practice needs a buy-sell agreement in place."

The next question is: How can the partner afford to do that? That's where insurance comes in. The partners in the business get insurance policies. When one dies, the others will use the money to pay heirs for their share.

Similarly, entrepreneurs should consider plans for covering disability. "Typically, a disability agreement would say that if the business owner can't return to work in a meaningful way within a year, or sometimes two years, the buy-sell agreement would be triggered," Woods says.

online poll question

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If there are many owners, they may decide it is too cumbersome for each owner to purchase policies on the others, Sutherland says. So they might set up a separate trust or partnership to purchase the insurance policies and hold the proceeds. These proceeds are used to purchase the departing owner's interest, he explains.

In handling these issues, shareholders have to understand the role of the company's attorney. "If we are legal advisers for the company, I can outline buy-sell agreements for the shareholders. I can help them analyze it and reach a mutual agreement and understanding of what they want to do," English says. "But I'm not an advocate for any one shareholder."

In most cases, he says, succession plan-

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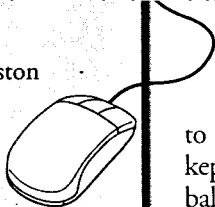
lating the company would tank. The list-serve that they were using included P.J. Gaier's e-mail address. "They said [P.J.] probably didn't have things in proper

5111 CHANGES FOR SURVIVAL

The daily demands of owning a business keep many family entrepreneurs from planning for the future. In fact, with each

Family Firm Institute in Boston
www.ffi.org

Virginia Family &
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www.bus.vcu.edu/vrbf



ning is an amicable process. "It depends on what cards the players hold around the table. In family situations, if you've got sibling rivalries, it can become acrimonious," he says. "Reasonable people reach reasonable agreements, and they are able to come to terms with each other."

Working and mourning

Preparation is everything. And in the case of BEX Logistics, the subject of succession had been broached.

P.J. Gaier liked to take adventurous vacations. Chewing-Bartlett remembers one in which he planned to climb Mount Whitney, the highest mountain in the contiguous 48 states. Before the trip, she grilled her boss. "What if you fall off that mountain?" she asked. Gaier explained he had taken care of that eventuality.

In fact, soon after his mother died in 2001, Gaier made a will. "When he handed me the legal papers, he said, 'We won't need these for another 45 years,'" recalls Tim Gaier.

Still, "He was smart enough to realize that things can happen. [P.J.] was the kind of leader who did not just bark out orders. He was like a teacher. He showed you how to do things," his brother says.

The weeks following the executive's death were rocky nonetheless. A death can bring out the best in people — and the worst, too. "We had a customer or two that tried to take advantage of the situation, to say they had a verbal deal with P.J. that was different than what was in the written contract," Tim Gaier remembers. "We knew that wasn't true. That wasn't the way [P.J.] worked."


There were also solicitations, Gaier says. "I must have had 12 calls from real estate people trying to sell [P.J.'s] house."

Gossip-hungry business types

order, Chewing-Bartlett remembers. "They didn't realize that I was getting P.J.'s e-mail."

Tackier still were the callers offering to take gifts and prized possessions that P.J. kept in his office — a St. Louis Rams football or a picture of a basketball game.

Today, P.J. Gaier's office remains exactly as he left it. "I have his ashes here. I have his pictures. I have his bookshelf, his awards. I still have the calendar of the year and date he had hanging," Chewing-Bartlett says, admitting, "It's hard. ... We won't let go."

There was a time when Tim Gaier and Chewing-Bartlett wondered if they would continue the business. "I will admit that for the first few months I said to myself, 'I don't think I can do this. It's too hard, too painful. There are too many memories.' After a time I realized that the best way to honor P.J. was to carry on," says Tim Gaier. Still, he adds, "It's easier to say that in hindsight." 



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generation, the survival rates drop. The Family Review, a publication of the Family Firm Institute in Boston, reports that:

- By the second generation of ownership, more than 30 percent of businesses are still operating
- By the third generation, 12 percent remain viable.
- By the fourth generation, only 3 percent remain open.

Here are some examples of Virginia family businesses that have continued over the long haul:

- J.T. Morriss & Son Funeral Homes in Petersburg, founded by James T. Morriss in 1856.
- C.F. Sauer Co, based in Richmond, begun by Conrad F. Sauer in 1887.
- Rucker Realty, based in Oakton, founded by George Rucker and Ashton Jones in 1906.
- Mars Inc., headquartered in Fairfax County, started by Frank Mars in 1911.

VIRGINIA'S

Leaders

IN THE **Law** 2006

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Virginia's **Leaders in the Law** Awards will recognize leading attorneys and judges throughout Virginia, based on a wide variety of achievement criteria. These include:

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