

by *Daniel M. Isard*

LEGAL ISSUES

BUSINESS MANAGEMENT

SUCCESSION PLANNING

## A Sad Succession Tale

What can a third-generation funeral director in his 60s do about having his dementia-stricken father sign over the business to him?

Dear Dan,

*I am a big fan, but I never thought I'd write to you. Many of the questions you field are humorous, but this is not. I am 60 years old and the third-generation operator of our family business. Dad and Mom are in their late 80s. Dad has dementia and maybe Alzheimer's. Mom has no idea of any business issues, denies Dad's illness and won't make any family or business decisions.*

*On good days, Dad is in the funeral home but often causes fiascoes. He ordered a truckload of caskets from some phone seller and we wound up paying \$30,000 for damaged and inferior products. I found out he fired the accountant a year ago and no bank statements have been reconciled since then. He hasn't filed a tax return for a year.*

*I met with a family friend who is a lawyer and she told me that short of having Dad declared mentally incompetent, I can't do anything. Mom will not testify to his dementia.*

*The other matter is the business. Dad owns all of the stock. For the past 20 years, he has promised to sell it to me, But he never has. I am six years away from retiring and I don't want the business at this late age. However, I do need some help being financially independent. I hate to be reliant on my parents when I'm 60 years old.*

*I have legal and business operational issues, as well as a family dilemma and a financial crisis. What can I do and what can others do to keep this from happening to them?*

*Signed, No Funny Name to Sign*

Dear Not Funny,

You are right. This reply will have no humor as there is nothing funny about your situation. There is financial ruin in your forecast.

If I approach your question with tact, there are really two times in your father's day. There are the moments when he is lucid and those when he is not. Timing is everything. During a lucid moment, you must explain to him what is happening. You need him to understand that his care and the care of your mother is in jeopardy. He needs to relinquish control to you for the business decisions and he needs someone other than your mother to be the trustee of his personal financial affairs.

Hire a good attorney to draft the documents needed and make sure to have a capable paralegal witness the signing of documents when your father is lucid. The paralegal should ask him questions that a lucid person would answer and vid-

eotape the discussion. They should record an affidavit of the event. This is important in the event a sibling or other party challenges the mental state of your father when he signed the documents. The burden is on you to defend his competency.

At the very least, there are business documents that can give you control of business matters. This can be an election as president of the business with your father's resignation. As president, you can make all of the decisions.

You might also want documentation for your father to resign as treasurer and give up check-writing privileges. Of course, no plan is foolproof for a hard-working fool. If he owns the stock, he can vote it and reverse these actions if he is influenced by others. Short of him agreeing to sell and you agreeing to buy the business, the solution is tenuous.

You mentioned that he is still showing up at the business when he's able. There must come a point when he should not have driving privileges. There are solutions to his mobility that can include third parties. The last thing you want is for someone who might be impaired mentally to be driving a car. If that car is owned by your business, an accident will create negative community sentiment.

Your letter did not express whether your father still meets with families. This should be avoided. You might ask him to greet families and have another staffer make the arrangements. His disability has the potential to be fodder for gossip-mongering clergy, casket salesmen and competitors. Rumors spread about an owner's inability to make arrangements or run his or her business have driven off patronage many times.

Good planning must take into consideration longevity and the possibility of human frailty. The keystone document each businessperson should have is a living trust, a document that gives control of your assets to another/others assuming you are unable to handle the assets. It transfers the assets to your wills and trusts if death occurs.

As life expectancy grows to almost 80 years old presently (from age 70 in 1960), we are going to have more people outlive their money. According to the Alzheimer's Association, 1 in every 9 people over age 65 has Alzheimer's disease! And while Alzheimer's affects those under age 65 as well, less than 2% of all of those afflicted are younger than 65.

Another planning tool is a buy-sell agreement, which allows the kids to buy the business when they want to. Your father and mother's care would be easier if their estate was liquid, but having a business is not the same as having cash.



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A business must be operated. If you and your father had entered into a buy-sell agreement, you could have bought the business at a preset price and terms. Your father's mental competency would not be an issue.

A recent survey I discovered found that 33% of all funeral home owners are age 50-59. About 23% are between the ages of 60 and 69. The largest increasing segment is those over age 70; currently, about 6% of all funeral home owners are age 70 or older. Just 10 years ago, this was about 3%, which means that this group has increased by 100% in a decade.

This group must plan for their financial protection, the protection of those they love and their community. The promotion of preneed for our neighbors pales in comparison to the financial necessity of planning our own business succession!

In my four decades of hanging around this profession, I have learned that society plays tricks on funeral directors. When you are 25 years old and can work for three days straight, no family wants to meet with you. At age 65 or 70, you are the one with whom they want to meet to make arrangements. Your personal goodwill is very strong. Yet your joints hurt and you can't handle the grind as well as a young director. It is an evil curse being a good funeral director and growing old.

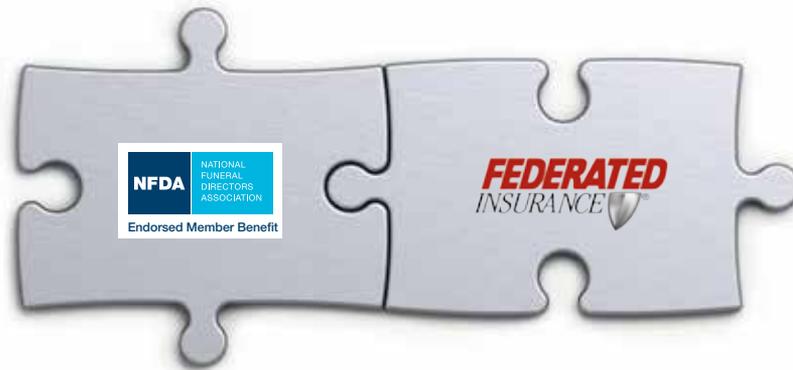
Writer, your situation is difficult. Being a caring child

who is respectful of his parents may hurt your future. Of course, you can't stop loving your parents and caring for them. Your letter is a look into the future for others should they continue to work in a family business without planning. It's a scary picture. My heart goes out to you.

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***The largest increasing segment of funeral home owners is those over age 70. The promotion of preneed for our neighbors pales in comparison to the financial necessity of planning our own business succession!***



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