

B.O.S.S.TM Workshops

(Business Owner Strategy Sessions)

Estate & Succession Planning

Speaker: Jane Higgins Marx
Carlile Patchen & Murphy LLP
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**Estate and Business
Succession Planning:
Why Every Business Owner
Needs an Exit Strategy**

Presented by

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ATTORNEYS AT LAW

WHAT IS YOUR ESTATE?

Estate = Assets – Liabilities
on your date of death

WHAT IS ESTATE PLANNING?

- Planning for disability and preparing your estate for an orderly and efficient distribution during life and upon death,
- Including providing for the continuation or termination of a family or closely held business, and
- Reducing estate taxes, when applicable

WHAT IS BUSINESS SUCCESSION PLANNING?

- The systematic transfer of the management and ownership of a business from one individual or group to another

WHY PLAN?

- Statistics show 70% of family businesses have failed by the third generation

WHY PLAN IN ADVANCE?

- Avoid planning during a crisis
- Avoid the necessity of a guardianship
- Provide owner and spouse with adequate retirement income
- Provide for all family members to be treated equitably, if not fairly
- Maximize the value of the business
- Avoid forced sale or liquidation
- Maximize estate planning effectiveness
- Reduce impact of taxes to the maximum extent

HOW DO I BEGIN THE PROCESS?

- Identify and value all of your assets, which includes valuing your interest in the business
- Goal is to determine fair market value of the business – the price at which the business would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts

EVALUATE THE OPTIONS FOR THE BUSINESS

1. Transfer to family at death
2. Transfer to family during life (gift vs. sale)
3. Transfer to key employee during life or at death
4. Sell to a third party (during life or at death)
5. Liquidate (during life or at death)

HOW DO I KNOW SALE OF THE BUSINESS IS THE BEST OPTION?

1. No leadership or talent in family members
2. Irreconcilable conflicts among family members
3. Some family not in the business
4. Liquidity needs are too great
5. Lack of confidence in product or industry
6. Taxes (although seldom the reason)
7. None of the managers have sufficient capital to run the business

I'VE DECIDED TO SELL THE BUSINESS, NOW WHAT?

1. Transfer stock to family members before the business increases in value and before it is put on the market
2. Hire a professional appraiser to value the business
3. Take actions to make the business more attractive to a buyer (takes three to five years)
4. Develop a good management team
5. Determine who the likely buyers may be
 - a. Key employees
 - b. Competitor
 - c. Strategic buyer
 - d. Financial buyer

I'VE DECIDED TO KEEP THE BUSINESS, NOW WHAT?

1. Enter into a Buy Sell Agreement with key employees
2. Groom successor managers
3. Determine the distribution of your assets at death
4. Consider liquidity needs to pay estate taxes
5. Create or revise your estate plan

FEDERAL ESTATE TAX (2012)

- Assets < \$5,120,000 = no estate tax
- Assets > \$5,120,000 35% tax

FEDERAL ESTATE TAX (2013 and beyond)

- Assets < \$1,000,000 = no estate tax
- Assets > \$1,000,000 up to 55% tax

OHIO ESTATE TAX (through 2012)

- Assets < \$338,333 → no estate tax
- Assets > \$338,333 but < \$500,000 → 6%
- Assets > \$500,000 → 7%
- Set for repeal January 1, 2013

GIFT TAX

- \$13,000 annual gifts pass tax free
- Married couples can gift up to \$26,000/person tax free
- Maximum life gift per person is \$5,120,000
- Medical/tuition exception
- No Ohio gift tax

WHAT HAPPENS IF I DON'T PLAN FOR MY DEATH?

- If you die without a Will, distribution of your property, including your business, is made according to State law.
- Under State law, distribution of property is based on your marital status.
- If you are separated or in the process of getting a divorce, you are treated under the law as a married individual. With proper planning, you can disinherit a spouse.

DEATH WITHOUT A WILL – SINGLE INDIVIDUAL

- If no spouse, but with children, your assets pass to your children in equal shares
- If no spouse and no children, then your assets pass to your parents, if living
- If no spouse, no children and no parents, then your assets pass to your siblings

DEATH WITHOUT A WILL – MARRIED INDIVIDUALS

- If married without children or with children of which the surviving spouse is the natural or adoptive parent of all the children, then **all assets go to the surviving spouse**
- If married with one child who is not the natural or adoptive child of the surviving spouse, the surviving spouse takes the first \$20,000, plus one-half of the balance of the property, the remainder to the child
- If married with more than one child and the surviving spouse is the natural or adoptive parent of at least one of the children, the surviving spouse takes the first \$60,000, plus one-third of the balance of the property, the remainder equally to the children

WHAT HAPPENS IF I DON'T PLAN FOR DISABILITY?

- You forfeit your right to control who will run the business in your absence.
- A guardian is appointed.
- You may be without a source of income

COMMON DISABILITY DOCUMENTS

- Durable General Power of Attorney
- Health Care Power of Attorney
- Living Will Declaration

DURABLE GENERAL POWER OF ATTORNEY

- Also known as a Financial Power of Attorney
- Appoints a person as agent to manage your financial and/or personal affairs, including voting the stock of your company
- Avoids the necessity of a guardianship (an adult needs a guardianship if mentally disabled)
- Guardianship involves a judicial proceeding and ongoing court supervision (costly and time consuming)

HEALTH CARE POWER OF ATTORNEY

- Gives another person (the health care agent) the power to make health care decisions in the event you lose the capacity to make informed health care decisions for yourself
- Also avoids the need for a guardianship over your person

LIVING WILL DECLARATION

- Governs the use of life-sustaining treatment if you are terminally ill or permanently unconscious and unable to communicate with your doctor
- A living will takes the life-sustaining treatment decision out of others hands (e.g., family)

COMMON ESTATE PLANNING DOCUMENTS

- Last Will & Testament
- Trust

LAST WILL & TESTAMENT

- Directs who receives your estate when you die
- Appoints an Executor of your estate.
- An Executor is the person who ensures the terms of your Will are carried out as directed
- Can appoint a guardian of minor children

ADVANTAGES OF HAVING A WILL

- Nominate a guardian of your minor children. If you fail to nominate a guardian then the probate court has sole discretion to select a guardian
- Control who receives your property rather than leaving it up to state law
- Make specific bequests
- Save needless administrative expenses
- Nominate your Executor rather than having the court appoint an Administrator

TRUSTS

What is a Trust?

- A Trust is a contract.
- The Trust contract is created by the Grantor.
- The Trust contract designates a Trustee.
- The Trust contract names a beneficiary or beneficiaries.

CHOICE OF TRUSTEE

- Individual Trustee: offers a personal touch; may serve for no compensation
- Corporate Trustee: provides professional financial management with an emphasis on conservation of principal; has extensive experience in performing the functions of a trustee

TYPES OF TRUSTS

- If created during lifetime, called a “**living trust**” or **inter vivos trust**”
- If established in a Will, called a “**testamentary trust**”
- Living Trusts are preferred
- Testamentary Trusts are subject to ongoing Probate Court supervision making them more expensive to administer
- **Revocable trust** may be amended or revoked at any time by the Grantor
- **Irrevocable trust** may never be amended or revoked by the Grantor

USES FOR TRUSTS

- Benefit minor children
- Protect privacy
- Creditor protection for beneficiaries other than the Grantor
- Provide for a disabled beneficiary in a way that won't cancel his/her public benefits
- Estate tax savings
- Probate avoidance (Note: Avoiding probate does not mean you avoid estate tax)

TRUST FUNDING

- Trust funding is the process of changing ownership of assets from your name to the trust's name
- Often occurs at death

WHY IS PROPERTY OWNERSHIP IMPORTANT IN ESTATE PLANNING?

- A Will only controls certain property (i.e., only property titled in your name alone)

WHY IS PROPERTY OWNERSHIP IMPORTANT IN ESTATE PLANNING?

(continued)

- Transfer on Death (TOD) and payable on Death (POD) assets pass to the TOD or POD beneficiary without regard to your Will
- Insurance proceeds and retirement plan death benefits will be paid to the designated beneficiary without regard to your Will

WHY IS PROPERTY OWNERSHIP IMPORTANT IN ESTATE PLANNING?

(continued)

- Certain jointly owned property passes automatically to the survivor without regard to your Will
- Insurance proceeds and retirement plan death benefits will be paid to the designated beneficiary without regard to your Will

REVIEW

- At a minimum, you should review your estate plan every 3-5 years
- You should make changes to your estate plan when major life events occur

Questions



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Q & A

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