IMPLEMENTATION AND DOCUMENTATION
OF THE SUCCESSION PLAN

Written and Presented by

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The information set forth in this outline should not be considered legal advice, because every fact pattern is unique. The information set forth herein is solely for purposes of discussion and to guide practitioners in their thinking regarding the issues addressed herein.

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IMPLEMENTATION AND DOCUMENTATION OF THE SUCCESSION PLAN

INTRODUCTION

A family business owner’s possessions including the family business make up his/her estate. Their orderly care during life requires wise business and financial management. Proper disposition upon death also requires prudent planning, which is what effective succession and estate planning is all about.

ORIENTATION OF AN EFFECTIVE SUCCESSION AND ESTATE PLAN

I. **Sense of Fulfillment**
The plan must satisfy the family business owner’s goals and objectives for his/her family and business.

A. Will the family business be kept in the family?
   1. Two-thirds of family businesses fail in the transition of management to children because:
      a. Parents fail to face their mortal nature;
      b. Parents fail to turn over operating authority and responsibility during their lives;
      c. Parents fear they won’t treat their children equitably.

B. Non-succession of management and/or ownership of the family business to children is not “failure”; in some cases, it is the most prudent business and family decision that can be made to ensure the preservation of the parents’ estate for the children and to maintain family harmony.

C. Reasons to sell or liquidate the family business rather than seek to perpetuate it for the children:
   1. No interested and/or qualified child and/or key non-family employee to take over operating control of the family business;
   2. The business is worth substantially more to a third party buyer than to the family because of buyer’s leveraging with buyer’s other businesses.

II. **Economics**
Who are the economic “players” in an effective succession and estate plan?

A. Family Business Owner and His/Her Family - The ones the family business owner wants to benefit.
B. Involuntary Philanthropy - The government through its tax system.
C. Voluntary Philanthropy - A charity that may be selected by family business owner as a succession and estate planning “partner,” allowing greater continuity of private initiative, resulting in “integrated estate planning.”

III. **Sense of Security**
The plan must not reduce the family business owner’s perception of his/her security, financial or otherwise.

IV. **Key Employee Benefit Alternatives**
See Exhibit 1.
V. **Development of a Family Wealth Objectives Statement** (aka Family Mission Statement)

See Exhibit 2.

VI. **Development of a Family Business Objectives Statement** (aka Family Business Mission Statement)

See Exhibit 3.

**GOALS OF AN EFFECTIVE SUCCESSION AND ESTATE PLAN**

I. Maintain maximum control and benefit of estate for family business owner and spouse during their lifetimes and after death of first to die while at the same time addressing goals of II. below.

II. Upon the death of the survivor of family business owner and spouse:

A. Minimize Federal Estate, Generation-Skipping Transfer and Income Taxes;
B. Transfer the family business to children working in the family business in the most tax-advantageous manner;
C. Divide the estate equitably among children;
D. Provide liquidity for the payment of Federal Taxes.

**MARKET FOR AN EFFECTIVE SUCCESSION AND ESTATE PLAN**

In the Trillions of Dollars

A. Tens of trillions are projected to pass to next generation before 2020.
B. Almost a quarter of financial assets of U.S. households are invested in privately-held concerns, mostly family business.
C. 75% of U.S. companies are family owned or controlled.
D. 1/3 of Fortune 500 companies are family businesses which produce a majority of the nation’s GNP and employ tens of millions of workers.

**THE FEDERAL TRANSFER TAX SYSTEM**

I. **The Federal Estate Tax**

The Federal Estate Tax is a tax on the privilege of transferring property at death. It is assessed against the value of your property in excess of $1,500,000 that is transferred to other than your spouse. Pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 (TRA-01), this $1,500,000 amount is increased in increments to $3,500,000 by 2009. The Federal Estate Tax is repealed for the year 2010 but is reinstated in 2011. The Federal Estate Tax rate is 37%-48%, depending on the value of your property and is payable within 9 months of your death. Under TRA-01 the top Federal Estate Tax rate is reduced incrementally to 45% by 2009. The value of property transferred at death to a qualified charity is 100% deductible in determining the amount of Federal Estate Tax.

II. **The Federal Gift Tax**

The Federal Gift Tax is a tax on the privilege of transferring property during life. It is assessed against the value of property given at the same tax rates as the Federal Estate Tax. The Federal Gift Tax lifetime exemption under TRA-01 is $1,000,000 and remains at that level. After repeal of the Federal Estate Tax in 2010, the Federal Gift Tax remains and will be applied at no less than the highest individual income tax rate (projected to be 35% at the time of repeal). The value of property given during life to a qualified charity is 100% deductible in determining the amount of Federal Gift Tax.