NAVIGATING THE CORPORATE TRANSPARENCY ACT: A MUST-READ FOR EVERY BUSINESS OWNER

Effective January 1, 2024, the Corporate Transparency Act will apply to a significant number of United States business entities and owners. This pivotal legislation is not just another regulatory hurdle; it marks a significant shift in how businesses operate in terms of transparency and accountability. Every business owner needs to understand the CTA and its implications for their business. In this article, we delve into the requirements under the CTA, equipping you with much of what you need to know to stay compliant.

1. What is the Corporate Transparency Act?

- At its core, the CTA introduces new reporting requirements for businesses, a move aimed at enhancing transparency.
- The CTA mandates that all reporting companies disclose specific details about their "beneficial owners" and "applicants" (described below) to the U.S. Treasury Department's Financial Crimes and Enforcement Network.

2. Compliance Timeline: A Closer Look

- *For Existing Entities*: If a business entity was formed prior to January 1, 2024, the business has a one-year window to submit a beneficial owner information report.
- *For New Entities*: If a business entity was formed on or after January 1, 2024, the business has 90 days after its formation to submit a beneficial owner information report.

3. What Information Must be Reported?

- Each beneficial owner and applicant is required to provide comprehensive personal information, including their full legal name, date of birth, current residential or business address, and a photocopy of a passport or driver's license.

4. Identifying "Beneficial Owners" and "Applicants"

- A "beneficial owner" is a person who either (1) owns 25% or more of an entity, or (2) exercises substantial control over the entity (e.g., any senior officer or director). In particular, the degree of control over an entity that constitutes substantial control is a heavily fact-based determination and often requires familiarity with the intricacies of a business entity's organization and structure.
- An "applicant" is a person who files an application to form or register a business by filing a document with the secretary of state or similar office.

5. The Need for Amendments: Keeping Information Up to Date

- **STAY VIGILANT**: Any changes in the reported information must be amended within 30 days, even if they seem minor.

6. Who are the “Reporting Companies”?

- A “reporting company” includes all entities formed or registered to do business in the U.S. through a filing with a secretary of state or similar office—including corporations, LLCs, LLPs, etc.—unless an exemption applies.
- Entities not created through such state filings, such as most trusts, are not subject to the CTA.

7. What Entities are Exempt from the Reporting Requirements?

- The CTA lists 23 exemptions, including:
  - “Large operating companies,” defined as entities with (1) over 20 full-time U.S. employees; (2) more than $5 million in revenue, and (3) a physical presence in the U.S.
  - Nonprofit entities, political organizations, and certain tax-exempt trusts.
  - Public companies, insurance companies, banks, registered investment companies, and other entities already subject to sufficient regulatory oversight.
  - Inactive entities no longer engaged in active business.
  - Subsidiaries wholly owned by the above exempt entities.
- Entities that are exempt for any of these purposes, or pursuant to any of the other exemptions listed in the CTA, do not need to take further action under the CTA.

8. Will the Reported Information be Publicly Available?

- No, beneficial ownership information reports and the information contained therein will not be publicly available.
- The information may be disclosed legally only to law enforcement agencies in specified circumstances and, with the reporting company’s permission, to banks for their Know-Your-Customer obligations.

9. What are the Penalties for Noncompliance?

- The penalties can be significant, with fines up to $10,000 and potential imprisonment. Additionally, these penalties do not only apply to the company: individuals in key positions may also be held accountable.

10. The Broader Impact: Why the CTA Matters?

- Most states do not require information about the beneficial owners of business entities, which can sometimes allow bad actors to conduct illicit activity through corporate structures and evade detection.
- The CTA seeks to enable law enforcement efforts to counter money laundering, tax fraud, human and drug trafficking, the financing of terrorism, and other illicit activity.

The CTA represents a significant shift in the corporate regulatory environment. Understanding and adapting to it is not optional, but essential. At O’Neil Cannon, we’re dedicated to helping our clients navigate the complexities of the CTA and ensure compliance. If you have any questions or need assistance with CTA compliance, please do not hesitate to contact us.

AN INTRODUCTION TO EARNOUTS FOR THE SELLER OF A REGISTERED INVESTMENT ADVISOR

The sale of a Registered Investment Advisor (RIA) involves various critical considerations, with the purchase price being one of the most significant. In connection with the purchase price, the seller of an RIA will often encounter the concept of a contingent purchase price, commonly called an “earnout.” In a business acquisition, an earnout is a payment arrangement where (i) a portion of the consideration paid by the buyer to the seller is not delivered until after the closing and (ii) the amount of such post-closing consideration is dependent on events that occur after the closing.

The payment structure of an earnout contrasts with the traditional payment structure of a business acquisition in which the total consideration (whether in cash, stock, or debt) is delivered by the buyer to the seller *at closing* in *a fixed amount*. In such a payment structure, delivery of the cash is typically executed by a wire transfer of immediately available funds, and delivery of stock or debt is completed by the exchange of signed documents at closing. Once the funds reach the seller’s bank account, the transaction is considered complete. The seller’s business is transferred to the buyer.

In the case of an earnout, the transfer of the seller’s business to the buyer is still complete at closing. The crucial difference is that payment of a portion of the purchase price depends on the performance of the acquired business during a specified period following the closing. The earnout payments are typically spread out over several years. In the case of an acquired RIA, the performance metrics that determine the amount of those payments commonly include Assets Under Management growth, revenue growth, profitability, client retention, and client acquisition.

In certain situations, the use of an earnout in the sale an RIA can be a strategic and beneficial arrangement for the seller. An earnout can benefit the seller by providing a higher total consideration received, a smoother transition for clients and employees, more flexibility in exit timing for the seller, and, in the event of valuation disparities between buyer and seller, the opportunity for the seller to realize the full enterprise value of the RIA. Careful planning is essential to achieving the desired outcomes of an earnout and protecting the interests of the seller.

A MICHIGAN JURY R-E-S-P-E-C-TS ARETHA FRANKLIN'S WISHES

In 2018, the "Queen of Soul" Aretha Franklin passed away, leaving behind four sons and a multimillion-dollar estate. Since this time, Franklin's sons have been engaged in a fierce legal battle regarding the application of contradictory handwritten wills and the proper division of her assets. Recently, a jury in the probate court in Pontiac, Michigan decided that Franklin's handwritten will drafted in 2014 revoked a previous handwritten will and will set forth how Franklin's assets will be divided amongst her children.

Initially, it was believed that Franklin died without a valid will and her estate assets would be distributed in accordance with Michigan's intestacy law. Under Michigan law, because Franklin was not married at the time of her death, her entire estate was to be distributed equally to her four children. However, months after Franklin's death, two conflicting handwritten wills were found in Franklin's home. The first document was discovered in a locked cabinet and was dated 2010. This document was approximately twelve pages long and was signed by Franklin on each page. The second document was dated 2014 and was found inside a spiral notebook tucked under a couch cushion. The 2014 document was significantly shorter than the 2010 document and was only signed "Franklin" with a smiley face nearby. The two handwritten wills were each drafted by Franklin herself and did not list any parties as witnesses. The legal battle revolved around which of the two handwritten wills would apply as they had conflicting terms for the division of Franklin's assets.

Two of Franklin's sons argued that the 2014 document revoked the 2010 document and met the legal standard for a "holographic will" under Michigan law. Typically, a will is only valid under Michigan law if it meets three requirements: (1) it is in writing; (2) it is signed by the testator or, while the testator is present, by another at the testator's direction; and (3) it is signed by at least two witnesses in a reasonable time after seeing the testator sign or after the testator acknowledges the signature. However, unlike Wisconsin, Michigan recognizes handwritten or "holographic" wills if the document is signed, dated, is in the testator's handwriting, and demonstrates by clear and convincing evidence that the testator intended the document to be their will. After less than an hour of deliberations, the jury determined that the 2014 handwritten document revoked the 2010 document and shall serve as Franklin's will.

Had Franklin been a Wisconsin resident at the time she drafted the conflicting handwritten wills, the legal battle between her children likely never would have occurred. In Wisconsin, for a will to be valid it must meet certain requirements: (1) it is in writing; (2) it is signed by the testator or signed in the presence of the testator at their direction; and (3) it is signed by at least two witnesses (who are unrelated and disinterested) within a reasonable time after

witnessing the signing of the will, after the testator's acknowledgment of their signature on the will, *or* after the testator's acknowledgement of the will. Wisconsin does not recognize holographic wills, and neither Franklin's 2010 nor 2014 holographic wills would have been upheld as valid regardless of a showing of Franklin's intent. Instead, Franklin's estate would be distributed in accordance with Wisconsin's default probate laws.

Estate planning can be a complex and stressful process for families, that too often ends in disputes between loved ones. The estate planning team at O'Neil Cannon is dedicated to assisting its clients navigate the estate planning process and creating a personalized plan that meets their goals and wishes for distributing their assets. In the event that disputes arise, O'Neil Cannon's inheritance litigation team is also prepared to assist its clients in all matters related to disputed estate planning documents. To schedule a consultation with a member of O'Neil Cannon's estate planning or inheritance litigation teams, please call (414) 276-5000.

EX-ATTORNEY CONVICTED OF STEALING MORE THAN $800,000 FROM ELDERLY VICTIM WITH DEMENTIA

The United States Attorney's Office from the Southern District of Ohio recently issued a press release that highlights how elderly individuals suffering from dementia may be vulnerable to financial abuse. The press release can be found here.

As the release explains, the attorney defrauded his client—an elderly woman in her 80s—over the course of seven years, between 2012 and 2019. The attorney's law license was revoked in 2015. The attorney stole the funds using a myriad of methods, including utilizing his role as the victim's power of attorney and status as a lawyer to transfer money to himself, to force the victim's signature on a revocation of a family member's separate power of attorney, and to cash out the victim's U.S. Treasury Bonds and life insurance policies. The attorney was sentenced to five years in prison and ordered to pay $882,502 in restitution.

This tragic story underscores the difficulties in flagging and investigating alleged financial abuse when the victim is not capable of protecting his or her own interests. It also rebuts the assumption that some courts and attorneys make in inheritance litigation that one only needs to look back a year or two prior to the victim's death to evaluate whether elder financial abuse of the victim may have occurred. Here, the victim suffered dementia for at least seven years.

If you or a loved one suspects that an elderly person with dementia is being taken advantage of, you should consider reporting elder abuse. There may also be options to pursue an investigation through a civil action. For example, in Wisconsin, there are routes to seek court review of an agent's conduct under a financial power of attorney.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Lippman assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Lippman has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. To schedule an initial consultation with Lippman, call 414.276.5000 or email him at trevor.lippman@wilaw.com.

EMPLOYEE RETENTION CREDIT (ERC): MAXIMIZING COVID RELIEF BY SUPPLEMENTING PPP

The Paycheck Protection Program has been commonly heralded as the foremost source of financial relief for businesses during COVID-19. However, the Employee Retention Credit or "ERC," is a lesser-known replacement or supplement for PPP that has remained largely unleveraged by employers. Enacted in March of 2020 under the CARES Act, the ERC provides qualifying employers with tax relief and potential refundable tax credits for all or a portion of the 2020 and 2021 tax years, up to $26,000 per full time employee in the best-case scenarios. Although originally created under the CARES Act, the ERC has been the subject of numerous amendments, modifications and IRS interpretations, all of which have muddied the waters for employers seeking to responsibly and accurately file for the credit. With this complex backdrop, this article will describe the general requirements and procedure for claiming the credit in addition to answering frequently asked questions regarding the same. However, any employer seeking to file for the ERC should first coordinate with its advisors, particularly its accountants and attorneys, to ensure accuracy, navigate potential pitfalls, and to avoid liabilities in applying for and claiming the credit.

How to Qualify – Eligible Employers

The threshold question for any business seeking to claim ERC is whether the business constitutes an "eligible employer," a requirement that can be met in one of three ways. Eligible employers must fall into one of the following categories:

1. The business was fully or partially suspended due to a government order during 2020,

2021, or some period therein (“Full or Partial Suspension”);
2. The business experienced a significant decline in gross receipts during a 2020 or 2021 quarter (“Sales Testing”); or
3. The business was a “recovery startup.”

For clarity, both for-profit as well as non-profit organizations may take advantage of the ERC provided that the entity constitutes an eligible employer.

Full or Partial Suspension: For a business to constitute an eligible employer via Full or Partial Suspension, the Federal government, or a state or local government having jurisdiction over the business, must have promogulated orders or other mandatory proclamations or decrees that suspend more than a nominal portion of the business’s operations. Under Full or Partial Suspension, a business will constitute an eligible employer for those periods of time that the applicable governmental orders caused the business to be fully or partial suspended.

Sales Testing: For a business to constitute an eligible employer via Sales Testing, the business must have experienced a significant decline in gross receipts for each calendar quarter in which the business is claiming the ERC.

- For 2020, a business will be deemed to experience a significant decline in gross receipts beginning as of the first 2020 calendar quarter in which the business’s gross receipts measure less than 50% of gross receipts for the same calendar quarter in 2019, and this Sales Testing period will continue to run until the first calendar quarter after the business’s gross receipts measure more than 80% of gross receipts for the same calendar quarter in 2019.
- For 2021, a business will be deemed to experience a significant decline in gross receipts for each calendar quarter in which the business’s gross receipts measure less than 80% of gross receipts for (i) the same calendar quarter in 2019 or (ii) the immediately preceding calendar quarter in 2019. Additionally, for businesses not in existence in 2019, a business may opt to use 2020 calendar quarters as the comparative quarters for Sales Testing.

Recovery Startups: For a business to constitute an eligible employer as a recovery startup, the business must have begun operations after February 15, 2020, and have less than $1,000,000 in revenue for the applicable calendar year(s).

Extent of Employee Retention Credit – Qualified Wages

For those businesses that constitute an eligible employer, the ERC is (i) limited to a percentage of “qualified wages” paid to employees during the applicable calendar quarter, and (ii) first credited against “applicable employment taxes,” with the remainder refunded to the taxpayer, all with different rules applicable in different calendar quarters.

- **2020 Q1 – Q4:**

    - For eligible employers with no more than 100 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
    - ERC is limited to $5,000 per employee, equivalent to 50% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales Testing period up to $10,000 in qualified wages per employee for the entire 2020 calendar year.
- **2021 Q1 – Q3:**
    - For eligible employers with no more than 500 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
    - ERC is limited to $7,000 per employee per fiscal quarter, equal to $21,000 across the first three quarters of 2021, equivalent to 70% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales Testing period up to $10,000 in qualified wages per employee per fiscal quarter.
- **2021 Q3 – Q4:**
    - The same rules as 2021 Q1 – Q3 apply, but recovery startup businesses may claim ERC not to exceed $50,000 for quarters 2021 Q3 and 2021 Q4, provided that the recovery startup does not qualify for or claim ERC under Full or Partial Suspension or Sales Testing.
    - Additionally, for 2021 Q4, ERC is only available for businesses that constitute post recovery startups and is no longer available for businesses via Full or Partial Suspension or Sales Testing.

Coordination with Other Programs – PPP and ERC

ERC may be limited for otherwise eligible employers when the business took part in other COVID relief or tax credit programs. Although an eligible employer may claim ERC even if the business received PPP loan forgiveness, the employer's qualified wages taken into account for ERC purposes must be reduced by any qualified wages constituting "payroll costs" in connection with PPP loan forgiveness. Additionally (among several other limitations), to avoid double-dipping on wage-based tax credits, wages taken into account for various other tax credits, including the following, may not also be utilized in claiming ERC: (i) R&D tax credit; (ii) Indian Employment Credit; (iii) Active-Duty Members Credit; (iv) Work Opportunity Tax Credit; and (v) Empowerment Zone Employment Credit.

Claiming the Employee Retention Credit – Procedure and Applicable Deadlines:

Today, the method by which an eligible employer claims the ERC is by amending its Form 941 quarterly federal tax returns (via Form 941-X). Additionally, businesses will generally have to amend their income tax returns in connection with claiming the ERC as any deductions taken for qualified wages will have to be reduced to the extent of the ERC received. The credit is available for as long as a business is able to amend its original form 941s. For an eligible employer's 941s filed in connection with the 2020 fiscal year, the business will generally have until April 15, 2024, to file a 941-X, three years after the general

deemed filing date for such 941s. For an eligible employers 941s filed in connection with the 2021 fiscal year, the business will generally have until April 15, 2025, to file a 941-X, three years after the general deemed filing date for such 941s. However, due to the lead time associated with filing for, being approved for and receiving any applicable refund in connection with the ERC, as well as the general requirement that the business's applicable income tax returns be amended, businesses desiring to claim the ERC should consider taking steps to claim the credit sooner rather than later, allowing for significant lead time.

Disclaimer – Seek Legal and Accounting Advice

Given the legal and accounting complexity associated with the Employee Retention Credit, any individual or business seeking to claim the credit must reach out and coordinate with their attorneys and accountants to determine the extent to which they qualify for ERC, if at all. This article is for informational purposes only and should not be relied on as either legal or accounting advice.

For questions or further information relating to the Employee Retention Credit please contact Attorney Samuel D. Nelson or Attorney Chad J. Richter.

THE RECENT DEATH OF LISA MARIE PRESLEY LEADS TO BREWING TRUST DISPUTE

Inheritance Disputes are Common Even Among the Wealthy

An inheritance dispute appears to be brewing following the recent death of Elvis Presley's only child, Lisa Marie. According to various news outlets, Lisa Marie appointed her mother, Priscilla Presley, and her then manager, Barry Siegel, as co-trustees of her trust in 1993. Following Lisa Marie's death on January 12, 2023, Priscilla discovered an amendment to the trust purportedly signed in 2016 that replaced both Priscilla and Barry Siegel as co-trustees.

According to Priscilla, there are various reasons the 2016 amendment may be invalid. One of these reasons is because the purported trust amendment was not delivered to Priscilla during Lisa Marie's lifetime as required under the terms of the original trust. Priscilla also raised concerns over the authenticity of the document and the signatures on the document itself.

Ultimately, a California court will be tasked with sorting through these issues that may pit a grandmother against her grandchildren.

Disputing an Amendment to a Trust in Wisconsin

The Wisconsin Trust Code recognizes the right for the settlor of a revocable trust to amend that trust. The capacity necessary to amend a trust is the same as the capacity required to make a will. The Wisconsin Trust Code holds that the terms of a trust prevail over any provision of the Wisconsin Trust Code unless certain exceptions exist.

It is not clear on the face of the Wisconsin Trust Code how a Wisconsin court would treat the specific claim Priscilla Presley appears to be making – that the amendment is not valid because it was not delivered to her as required by the terms of the trust. The Wisconsin Trust Code states that a settlor "may revoke or amend a revocable trust" by "substantial compliance with the method provided in the terms of the trust." Here, a Wisconsin court would have to review the terms of the Presley trust and determine whether the other components of the amendment without delivery to Priscilla amounted to "substantial compliance."

If a trust does not provide a method to revoke or amend a trust, Wisconsin recognizes one may be able to revoke or amend a trust by referencing the trust or the trust property as part of a will or codicil or by "[a]ny other method manifesting clear and convincing evidence of the settlor's intent."

Challenging or seeking to uphold a trust amendment can be complicated and fact intensive. These issues also oftentimes deal with dynamic family relationships. If you are a trustee and a beneficiary is seeking to challenge a trust amendment or a beneficiary who has questions involving a trust amendment, it may be best to reach out to an attorney with experience handling matters under the Wisconsin Trust Code.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

HOW DO WISCONSIN'S NEW LLC LAWS IMPACT MY COMPANY?

In April of 2022, Wisconsin passed new business entity laws, greatly impacting limited liability

companies and their members, and largely overhauling and replacing Chapter 183 of the Wisconsin Statutes, which governs LLCs. This article will help you identify the key changes under the new LLC laws, as well as point you towards the next steps in preparing for this overhaul—including decisions to be made before year-end. For purposes of this article, we'll refer to the new Chapter 183, the Wisconsin Uniform Limited Liability Company Law (WULLCL), as the "New LLC Laws," and refer to the pre-WULLCL Chapter 183 as the "Old LLC Laws."

The first significant deviation from the Old LLC Laws impacts your LLC's operating agreement—the agreement governing the relationship between the members or owners of an LLC. Under the New LLC Laws, the meaning of an "operating agreement" has been expanded to include not only your formal, written agreements (if you have one), but also any verbal agreements, implied understandings, and any combination thereof. It has always been important for the members of an LLC to have a written operating agreement to clearly set forth the understandings governing their relationship. However, that importance is magnified under the New LLC Laws now that you must ensure that ancillary agreements, whether verbal or implied, do not rule the day on a particular issue or disagreement between members.

The New LLC Laws have also brought changes to the reach of certain fiduciary duties that members or managers may owe one another. Under the Old LLC Laws, members and managers of an LLC could waive some of these duties, including those duties of good care and loyalty, as well as the obligation of good faith and fair dealing. However, under the New LLC Laws, these duties are now mandated against members and managers by default unless otherwise provided for in your operating agreement (subject to restraints on how far fiduciary duties can be limited). With that said, if your LLC has an operating agreement currently in place that provides for the waiver of these duties, that waiver will be valid and honored under the New LLC Laws.

Another impactful departure from the Old LLC Laws relates to a member's authority to act on behalf of your LLC simply by virtue of their status as a member (commonly referred to as "apparent authority"). Under the New LLC Laws, the members of your LLC are not automatically granted the authority to act on behalf of the company merely because they are members. Instead, this authority needs to be established, most often either by documentation in your LLC's operating agreement, or by filing a Statement of Authority with the Wisconsin Department of Financial Institutions ("WDFI"). Whichever the method, those documents need to set forth who or what positions in your LLC possess the authority to act on behalf of the company as an agent.

The New LLC Laws may also broaden the rights of certain members to access information regarding your LLC, purely as a result of their membership status, and with no regard for their role in management. Where the Old LLC Laws were silent as to a dissociated member's

right to access an LLC's information, the New LLC Laws make clear that dissociated members possess the same rights to access, inspect and copy information regarding an LLC and its activities as an active member possesses, albeit these rights must be exercised through a representative. This means that under the New LLC Laws, a dissociated member may have the right to access certain sensitive information regarding your LLC, including its financial statements, subject to certain statutory restrictions or restrictions set forth in your operating agreement.

Depending on your circumstances, it may also be worth considering some of the more technical updates brought on by the New LLC Laws, particularly with respect to your LLC's Articles of Organization—your company's charter. For one, under the Old LLC Laws, the management designation had to be set forth in your LLC's Articles. However, under the New LLC Laws, if you want your LLC to be managed by a manager or group of managers specifically rather than the members generally, then your LLC's operating agreement must provide for this designation, but its Articles can remain silent as to the same. With that said, your LLC's Articles, in addition to your operating agreement, may still provide for a management designation if your members so choose. Additionally, under the New LLC Laws, your LLC's Articles must provide for both a street address and an email address for your LLC's registered agent.

Given all these updates, the WDFI has provided LLCs with the opportunity to opt in to the New LLC Laws early or opt out in favor of the Old LLC Laws. If you want your LLC to opt in to the New LLC Laws, you can either file a Statement of Applicability no later than December 31, 2022, or, alternatively, do nothing between now and the end of the year and your LLC will automatically be governed by the New LLC Laws beginning January 1, 2023. However, if you want your LLC to opt out of the New LLC Laws and continue to be governed by the Old LLC Laws, **you must file a Statement of Nonapplicability no later than December 31, 2022**. Additionally, this opt-out filing should be paired with member or manager approval, likely in the form of a consent resolution approving the filing.

If you have any doubts or concerns about your LLC being governed under the New LLC Laws, it may be worth filing a Statement of Nonapplicability before the end of the year, even if only precautionary. If you ever decide to be governed by the New LLC Laws in the future, you can simply file a Statement of Applicability and opt in, but once opted in—whether by default on January 1, 2023, or by an opt-in filing—your LLC cannot revert back to governance under the Old LLC Laws.

As always, O'Neil Cannon is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have.

ANNE HECHE'S WILL CONTEST: A CAUTIONARY TALE

The circumstances involving Anne Heche's estate are a stark reminder of the uncertainties that may exist following the death of a loved one and the issues that can arise even when someone *thinks* they have their estate plan in place.

Heche's (Possible) Will

When the Emmy Award-winning actress died after a fiery car crash in August 2022, she left behind two sons. After her death, her former partner, James Tupper, the father of the younger of Heche's sons, came forward with a document—reportedly an email from 2011—that he said names him as the administrator of Heche's estate.

In response, Heche's older son, Homer Laffoon, filed a petition to assume control over Heche's estate. In doing so, Laffoon also said that the 2011 document is not a valid will because it does not meet requirements under California law.

More specifically, Laffoon argued, in part, that the document does not qualify as a valid will because it does not contain Heche's signature and was not observed by two witnesses as required by California law. Because there is a question as to whether Heche had a valid will, a probate court must decide the issue before her assets can be distributed.

State law varies on the requirements of a valid will, so let's look at what is required in Wisconsin.

What is a Valid Will in Wisconsin?

First, for a valid will in Wisconsin, the testator (the person making the will) must have the capacity to create a will, which means the person must be at least 18 years old, of sound mind, and acting on their own volition.

For a will executed in Wisconsin to be valid, it must be written down and signed by the testator, or with the assistance of another person with the testator's consent and in the testator's conscious presence, and signed by two witnesses. If a witness to the will is a beneficiary of the will, his or her interests will most likely be limited to what he or she would have received had the testator died without a will, through intestacy law.

Proving a Will in Wisconsin

In Heche's situation, a judge must decide whether Tupper's proposed 2011 document is a legally valid will. Without a valid will, Heche will have died "intestate," and the probate court will distribute Heche's assets according to California law.

Similarly, when a Wisconsin resident dies, his or her estate will be distributed under Wisconsin intestacy law unless a will is admitted to probate. Depending on the circumstances, it might be appropriate to investigate the circumstances surrounding the purported execution of a will by the testator and/or the witnesses prior to waiving any rights to challenge the proposed will.

Our inheritance litigation team has a wide array of experience in handling will disputes—whether investigating the authenticity of the document itself, analyzing the legal sufficiency of a proposed will, or investigating concerns over lack of legal capacity and undue influence. If a court finds that a document does not meet the legal requirements of a valid will, the decedent's estate may be distributed under a testator's previous estate plan or under Wisconsin intestacy law.

Anne Heche's situation is another reminder of the unfortunate complications and issues that may arise following the death of a loved one.

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THE GREAT WEALTH TRANSFER AND ITS IMPLICATIONS ON ESTATE, TRUST, AND PROBATE LITIGATION

On August 14, 1945, Life magazine photojournalist, Alfred Eisenstaedt, captured the spirit of the nation in his photo of a sailor embracing a nurse in New York's Times Square. It was the end of World War II, and America was at the top of its game. Although the US had been late to enter the war, after the attack on Pearl Harbor on December 7, 1941, it was all-hands-on-deck. In his best-selling book, Tom Brokaw described the veterans and their peers as "the

greatest generation."

When the war ended, families reunited. Sweethearts got married and spent lots of quality time together. The birth rate—dubbed "the baby boom" —became exceedingly high. The children born in the years following World War II grew up in a period of economic prosperity. Many of the children of "the greatest generation" grew rich, far beyond their parents' dreams. Decades later, Baby Boomers' wealth is now shifting to younger generations in what has been referred to as The Great Wealth Transfer.

Generation Defined

"Generation" is one of those ineffective words. It may refer to a group of people of similar age with a common philosophy or lifestyle, such as the "Hippie generation" and the "Me-generation." It may also refer to people born within the same time period of roughly 15 to 20 years—a useful basis for economic analysis. The following are popular generational terms for people living in the US today, grouped by ages from youngest to oldest:

- Generation Z (Gen Z, 10–25, born between 1997–2012)
- Millennials (26–41, born between 1981–1996)
- Generation X (Gen X, 42–57, born between 1965–1980)
- Baby Boomers (58–76, born between 1946–1964)
- Greatest Generation (77–100+, born between 1922–1945)

How Much Wealth Do the Boomers Hold?

Anyone born between the years 1946 and 1964 qualifies as a "Boomer." In 2022, the oldest Boomers will be 76 years old, and the youngest, 58. Boomers, like any other age group, consist of a diverse array of people. However, as Boomers spread their wings in the 1960s, '70s, and '80s, they developed common characteristics. During those times, adult Boomers had lofty expectations and sought financial stability and success far beyond the lifestyles many of them had been raised in.

Not all Boomers are wealthy, but some Boomers are extraordinarily wealthy. This wealth accumulated through a combination of personal drive and favorable circumstances, including:

- educational opportunities;
- shoulder-to-the-wheel mentalities;
- entrepreneurship and access to capital;
- ingenuity in business and technology;
- real estate appreciation;
- investment in the rising stock market (e.g., bull market of 1980's);
- compound interest (return on savings); and
- tax advantages.

Boomers make up about 20% of the US population. The Boomer generation's accumulated wealth adds up to roughly $35 trillion, more than a quarter of all US wealth. The Boomers own the lion's share in various asset categories, including the following:

- real estate, 43%;
- corporate equities (including mutual funds), 55%;
- pension entitlements, 50%; and
- private business ownership, 46%.

Father Time is undefeated. As Boomers start to move into their long-awaited retirement and twilight years, Boomers are re-evaluating priorities and thinking about the legacies they wish to leave behind. Analysts estimate that between 2018 and 2042, 40 million households will transfer close to an astonishing $70 trillion dollars to younger generations. Likely beneficiaries will include children, grandchildren, and great grandchildren. Other potential beneficiaries will include surviving spouses, partners, friends, and donations. Many Boomers also wish to consider providing for loved ones or charities during their lifetimes.

Millennials Will Inherit Boomers' Wealth

In the next 20 years—thanks to the Great Wealth Transfer—Millennials will become the wealthiest generation in US history. Millennials grew up with daycare centers and the internet. Many have divorced parents, blended families, and two-income families are the norm. Many Millennials are still paying off student loans. They are getting married later in life and having fewer kids. They are racially and ethnically diverse.

Although Millennials make up about one-fifth of the population, they control a little less than 5% of the wealth. Unlike the Boomers, Millennials got off to a slow start financially, starting their careers during a period of economic recession. In recent years, they have gained momentum, thanks to low interest rates, entrepreneurship, and homeownership. In fact, Millennials hold the greatest portion of their wealth in real estate.

Wealth Transferred, Wealth Lost

History tells us that self-made millionaires and billionaires are more likely to preserve and increase their wealth than people who inherit large sums of money. Of the wealthiest people in the world, almost 70 percent are self-made. Each successive generation of beneficiaries is more likely than the previous one to lose a substantial portion of inherited wealth.

But history is not destiny. There are several resources for managing wealth and new investment options. Millennials could be the first generation to increase inherited wealth.

Family Fights

When this amount of wealth is changing hands, family and other emotionally charged disputes are inevitable. This is particularly so as Boomers reach their 80s and 90s, many of whom, statistically, will suffer from some form of dementia or other cognitive decline. Families all have their own histories and are made up of unique relationships that are oftentimes decades in the making. Siblings and children may squabble. Step-parents and step-children do not always get along. Friends and neighbors might get their hands caught in the proverbial cookie jar. As a result, loved ones may challenge gifts, deeds, trusts, wills, and the designation of various accounts, among various other kinds of transfers. A person is allowed to do with his or her property what he or she wants. However, if that person lacks the legal capacity or was unduly influenced by a loved one or acquaintance, serious questions may arise as to the authenticity of certain transactions or estate plans.

Consult a Professional

Trevor C. Lippman is an experienced attorney at the law firm of O'Neil Cannon Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consult with Attorney Lippman, call 414.276.5000 or email Trevor directly at trevor.lippman@wilaw.com.

DETERMINING THE CITIZENSHIP OF BUSINESSES

People forming a new business and selecting between the different entity types may be unaware of the impact the formation choice can have on future lawsuits. In particular, the citizenship of the business can be critical to determining whether a case belongs in state court or federal court when a dispute involves over $75,000. With the many considerations business owners have to weigh when forming a new entity, the effect on hypothetical litigation is unlikely to be of primary importance, but it is useful to keep in mind.

The key inquiry when determining whether a federal court has jurisdiction over many business disputes, especially contract disputes, is whether the parties are citizens of different states—that is, whether there is diversity jurisdiction. A business's citizenship for purposes of diversity jurisdiction often is *not* the same as where the business is registered, especially for limited liability companies (LLCs) and partnerships.

Corporations are citizens of both the state where it is incorporated and the state where its principal place of business is located. For an LLC, the analysis is more complicated, and depends on the citizenship of each member. For example, if an LLC has four members—two citizens of Wisconsin, one a citizen of Illinois, and one a citizen of Iowa—the LLC is a citizen of Wisconsin, Illinois, and Iowa. Occasionally, an LLC has so many members it is difficult to assess its citizenship, especially when any members are themselves LLCs or other corporate entities. Similarly, the citizenship of a partnership depends on the citizenship of each partner. That means an LLC or partnership with members or partners in multiple states may be more limited in the ability to invoke the jurisdiction of federal courts for ordinary contract disputes, because disputes with citizens of any of the same states that are not based on federal causes of action will not be within the jurisdiction of federal courts. Whether that is good or bad strategically depends in large part on the circumstances of the particular dispute.

Sometimes parties have tried to get around the complications of the citizenship analysis by appointing an agent to enforce their rights, often when there are many real parties in interest. Though cases have reached conflicting results, several courts have held that the citizenship of the agent does not control. Courts then analyze the citizenship of each represented business or individual.

For many businesses, planning for unforeseen litigation can be like planning to be struck by lightning—you never want to experience it, you can’t predict it, and if you’re lucky, you can avoid it. Even still, it can be useful to know what to expect if a lawsuit arises.

For more on jurisdictional issues or a variety of other legal matters, contact Christa Wittenberg at 414-276-5000 or christa.wittenberg@wilaw.com.