

# A MUST-READ BOOK FOR FAMILY BUSINESS OWNERS

Recognizing that family-owned business owners throughout Wisconsin have ongoing questions when it comes to selling and transferring ownership of their companies, the law firm of O'Neil Cannon Hollman DeJong and Laing has written *The Art, Science and Law of Business Succession Planning*.

"Our goal is to help owners understand the importance of succession planning and give them a good starting point for implementing it in their own businesses."

Available in paperback on [Amazon](#) for \$19.95 and as a Kindle ebook for \$9.95, the law firm's book explains that whether the plan is to sell the business to fund the owner's own retirement or pass the business on to descendants or other key employees, there are questions that need to be answered sooner rather than later:

- Am I prepared to consider transferring ownership or control of my business during my lifetime?
- Have I made sure that the transition will be orderly?
- Will my key employees stay with the business rather than seek other employment?
- Is my estate sufficiently diversified so that children who are not active in the business may be treated fairly alongside those receiving an interest in the business?

The law firm's corporate and tax attorneys incorporated the latest changes to federal tax law into the inaugural edition of the book.

Book chapters include:

Chapter 1: The Need for Succession Planning

Chapter 2: The Five Objectives of Good Succession Planning

Chapter 3: Objective 1-Maximizing the Value of the Business

Chapter 4: Objective 2-Minimize Taxes

Chapter 5: Objective 3-Provide for the Continuity and Survival of the Business

Chapter 6: Objective 4-Treating Your Children Equitably

Chapter 7: Objective 5-Preserving Family Harmony

Chapter 8: Seven Pitfalls that Work Against a Successful Transition

Chapter 9: What a Good Succession Planner Will Do

Chapter 10: Structuring Buy-Sell Agreements

Chapter 11: The Key Employee Agreement

"If a business fails due to improper planning, children's futures are affected, and so are the

futures of every employee who works for the company,” Holborn said. “By following the steps necessary to take a company into the next generation, owners are not only potentially benefitting every member of their business team, but also their families and their descendants after them.”

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## **STATE BAR OF WISCONSIN TAXATION LAW SECTION BOARD ADDS NEW DIRECTOR AND VICE CHAIRPERSON**

On July 1, 2018 Attorney Samantha M. Amore began a three-year term as a Director of the Board of the State Bar of Wisconsin Taxation Law Section. The Taxation Law Section has more than 500 members. The Board’s mission is to provide its members with a forum to discuss issues pertaining to federal and state taxation, as well as to recommend legislation and to provide opportunities for professional education and networking.

Samantha is a member of the firm’s Business Law and Tax/Succession Practice Groups where she focuses on tax planning. Samantha offers planning strategies on entity selection and formation; prepares and negotiates organizational documents such as operating and shareholders agreements; and structures mergers, acquisitions and reorganizations. Additionally, she assists clients with various federal and state tax matters, including equity rollovers, like-kind exchanges, and obtaining and maintaining tax-exempt status. Samantha also counsels individuals on estate and business succession planning matters.

Samantha is very pleased to be elected and look forward to being involved with the Board in their new roles.

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## **THE WILAW QUARTERLY NEWSLETTER**

### **Newsletter Article Highlights:**

- Protecting the Elderly from Fraud by Caregivers
- Debt Collection Safe Harbor May Not Be So Safe
- Mental Capacity Issues in Estate Planning Litigation
- Employers Should Review Their Employee Non-Solicitation Agreements
- What Should Businesses Know About the Tax Plan?

## Pleased to Announce:

- Steve Slawinski Elected to the ABC of Wisconsin Board of Directors
- Gregory Mager Moderates for the AAML

Click the image below to read more.



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## GREGORY MAGER MODERATES FOR THE AAML

Attorney [Gregory S. Mager](#) recently moderated the Family Court Commissioners' Panel at the 36<sup>th</sup> Annual Midwinter Seminar for the Wisconsin Chapter of the American Academy of Matrimonial Lawyers.

The [American Academy of Matrimonial Lawyers \(AAML\)](#) was founded to provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law, including divorce and child custody decisions.

The AAML focuses on generating assistance, support, and growth for education, mediation, and arbitration in matrimonial law. The organization makes resources available to its members, including news, publications and other information on important sociological and psychological research concerning marriage breakdown, with particular attention on the consequences for the children of separated and divorced parents.

Greg has been a fellow in the AAML since 2012. He is recognized by judges and peers as one of Wisconsin's premier family law attorneys. He uses his extensive skill, training, and experience to help his clients achieve successful resolutions of their divorce, paternity, custody, placement, and support matters. Greg is uniquely positioned to successfully represent clients in their family law matters, including those involving complex business, financial, and child related issues.

*For additional information, please contact Greg at [Gregory.Mager@wilaw.com](mailto:Gregory.Mager@wilaw.com) or 414-276-5000.*

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# EMPLOYMENT LAWSCENE ALERT: RECENT LEGISLATION IMPACTS QUALIFIED RETIREMENT PLAN HARDSHIP WITHDRAWAL AND PLAN ROLLOVER RULES

The two-year budget agreement passed by Congress on Friday, February 9th, and signed by President Trump later that day, includes tax policy changes that affect qualified retirement plans. Specifically, qualified retirement plan hardship withdrawal operations will be impacted by the Bipartisan Budget Act of 2018 (the Budget Act) as follows:

- **Removal of the six-month prohibition on deferrals following a hardship withdrawal.** Section 41113 of the Budget Act directs the IRS to issue updated guidance to permit 401(k) and 403(b) plan participants who have taken a hardship distribution from a retirement plan to continue contributing to the plan, even immediately following the hardship distribution. Under current rules, once a participant elects to take a hardship distribution, no elective deferrals are permitted to be made until six months have passed from the date of the distribution. The revised rule will take effect on January 1, 2019 for plans that have a calendar-year plan year.
- **Inclusion of QNECs, QMACs, and profit-sharing contributions in hardship withdrawals.** Under current regulations, a plan sponsor may specify the sources of a participant's plan assets eligible for a hardship withdrawal, but such assets may in no event include certain employer contributions. Beginning on January 1, 2019 (for calendar-year plans), the Budget Act rules will permit a participant's 401(k) or 403(b) plan assets deriving from employer profit-sharing contributions, as well as from employer corrective contributions known as Qualified Nonelective Employer Contributions (QNECs) and Qualified Matching Contributions (QMACs), to be included in sources from which a hardship withdrawal may be taken. The earnings on such contributions will also be included among the assets available for withdrawal. Section 41114 of the Budget Act not only expands the potential sources of a hardship withdrawal, but also eliminates the requirement (previously elected by some employers) that a participant must have taken a plan loan before qualifying to take a hardship withdrawal.

The Tax Cuts and Jobs Act of 2017 (the Tax Act), signed into law by President Trump on December 22, 2017, affects certain plan loan distributions. Specifically, for all tax-qualified retirement plans that offer loans, including 401(k), 401(a), 403(b), and governmental 457(b) plans, the Tax Act provides for an:

- **Extended Deadline for Rolling Over Certain Plan Loan Offsets.**
  - Background and prior law: A plan loan "offset" occurs when an individual owes an outstanding loan to a qualified retirement plan, but then experiences a distribution event that is either (1) a termination of employment; or (2) the termination of the

plan. If the plan, in such situation, permits a participant's account balance to be paid out in full, minus the loan amount, then a plan loan offset occurs. A Form 1099-R is issued, indicating that the offset amount is an actual distribution. If a participant receiving a loan offset takes no action, the offset loan amount is considered or "deemed" to be a distribution, and is subject to taxation. Under these facts, taxation of the offset amount can be avoided if: (1) the distribution is otherwise eligible to be rolled over; and (2) the participant rolls the full amount of the distribution, including the amount of the offset, into an IRA. To include the offset amount in the rollover, the participant will need to contribute personal (or borrowed) funds to the rollover amount. Previously, offset loans could only avoid taxation if such a rollover occurred within the 60-day period beginning on the date offset distribution.

- New law, effective for plan years beginning on and after January 1, 2018: The Tax Act expressly extends the time period for avoid taxation by rolling over an offset loan until the participant's deadline for filing a federal income tax return (taking any extensions into account). This change means that in many cases, a participant will have more time in which to effect a tax-free rollover of a loan offset occurring following termination of employment.

## Caution: No Change to Basic Tax Rules

Although recent legislation is trending toward easing the rules relating to hardship withdrawals and plan loans, it is important to remember that nothing about the fundamental tax treatment of these distributions have changed.

A common misconception (especially among participants) is that if a participant qualifies for a hardship distribution, then the distribution from the plan is tax-free.

A hardship distribution is subject to the same taxation rules as other plan distributions.

Satisfying the standards for a hardship distribution simply entitles the participant to receive an in-service distribution of elective deferrals (and other contributions) from the plan, but the hardship distribution is subject to income taxes applicable to plan distributions. A hardship distribution is also generally subject to a 10% early distribution penalty, unless the participant has reached age 59-1/2. A hardship distribution is never eligible to be rolled over into an IRA.

Similarly, once a plan loan has been deemed distributed (either due to a plan loan repayment default, because a plan does not provide for an offset option upon distribution, or because an offset is not timely rolled into an IRA), the deemed distribution of a plan loan is taxed in the same manner as a regular plan distribution for purposes of determining the tax, including any early distribution penalty. A deemed distribution may never be rolled over into an IRA.

## Plan Sponsor Action Items

With respect to plan hardship distributions, employer sponsors of 401(k) and 403(b) plans

should prepare for the 2019 plan year by:

- Considering whether it is desirable to add a hardship distribution option to the plan (if not already permitted). If hardship distributions will be added, amend the plan and communicate the availability of the option to participants by preparation and distribution of a Summary of Material Modification (SMM) (or other appropriate form of communication in the event of a non-ERISA plan).
- Plan documents that already provide for hardship distributions should be amended, effective for the first day of the 2019 plan year, to eliminate the 6-month restriction on elective deferrals following a hardship distribution and to expand the permitted accounts from which hardship distributions may be taken. These details should be communicated to participants in the form of an SMM.

With respect to plan loans, plan sponsors of plans that permit loans should:

- Review the plan loan policy and plan loan provisions to determine if either should be updated to reflect this rule, or consider whether to modify the loan policy to take advantage of this rule. For example, if the plan currently permits continued loan repayments following termination of employment consider whether this option should be continued or eliminated. Consider also whether a loan note should be allowed to be rolled over to a successor plan upon plan termination or if the new extended rollover period provides sufficient flexibility to participants absent a rolled over loan note.
- Consider whether plan participant communications should be revised to alert participants to the greater flexibility now allowable for rollover of loan offset amounts.
- As applicable, confer with any third-party administrator for the plan to avoid inadvertently deeming a participant's loan a deemed (taxable) distribution.

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## **ATTORNEY CLAUDE J. KRAWCZYK INVOLVED IN RESTORING MARQUETTE CAMPUS STATUE**

The George Washington statue has returned to Wisconsin Avenue near the campus of Marquette University. The 133 year-old monument had been removed for restoration, which involved removing layers of black corrosion and the repair of splitting bronze. Attorney [Claude Krawczyk](#) currently serves as the president of The Westown Association, which raised funds for the restoration effort. In total, the restoration project cost more than \$100,000 to complete. Attorney Krawczyk had a special interest in the project, explaining “I can remember seeing [the statue] when I was a kid, it’s been there all my life. I think it’s an important memory for Milwaukee ... an important symbol.” Read full story [here](#).

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# THE WILAW QUARTERLY NEWSLETTER

## Newsletter Article Highlights:

- What Should You Do If You are Named Trustee?
- Do Your Due Diligence
- A Deeper Dive Into the Arbitration Process and a Look at the Advantages and Disadvantages of Arbitration
- ACA Employer Payment Notices Arriving Soon
- What Should Individuals Know About the Tax Plan?

## Pleased to Announce:

- OCHDL Welcomes New Attorney Kelly M. Spott
- Scoby and Gagan Elected Shareholders
- Congratulations to Our 2017 Super Lawyers

Click the image below to read more.



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## O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING ELECTS SCOBY AND GAGAN AS SHAREHOLDERS

O'Neil, Cannon, Hollman, DeJong and Laing is pleased to announce that Attorney Jason Scoby and Attorney Bob Gagan were recently elected as shareholders of the firm.

Mr. Scoby has been with the firm since 2009 and is a member of the firm's Business Practice Group and Banking and Creditors' Rights Practice Group. He advises and represents individuals, businesses, and banks on a variety of corporate, banking, and business-related issues, including mergers and acquisitions, commercial loan transactions, corporate issues, contract negotiation and preparation, and business entity selection and formation.

Learn more about Mr. Scoby by visiting his [full profile](#).

Mr. Gagan has been with the firm since 2016. Bob is a respected Wisconsin business law attorney. He focuses his practice on corporate law and commercial litigation as well as municipal law. Mr. Gagan is a Past President of the State Bar of Wisconsin. He previously served as the Brown County representative on the State Bar Board of Governors and also served on the Board of Governors Executive Committee. Mr. Gagan is the co-founder of the Brown County Free Legal Clinic and continues to volunteer his time at this Free Legal Clinic.

Learn more about Mr. Gagan by visiting his [full profile](#).

We are pleased to add both Jason and Bob as shareholders.

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## O'NEIL CANNON RANKED IN 2018 "BEST LAW FIRMS"

O'Neil Cannon has been ranked in the 2018 U.S. News - Best Lawyers® "Best Law Firms" list in 13 practice areas:

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Commercial Litigation
- Construction Law
- Corporate Law
- Family Law
- Litigation - Bankruptcy
- Mergers and Acquisitions Law
- Personal Injury Litigation - Plaintiffs
- Product Liability Litigation - Defendants
- Real Estate Law
- Securities / Capital Markets Law
- Tax Law
- Trusts and Estates Law

Firms included in the 2018 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

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# SEVENTEEN ATTORNEYS NAMED SUPER LAWYERS

Each year, *Super Lawyers* surveys the State's attorneys and judges, seeking the State's top attorneys. The lists for 2017 were recently published and, once again, a large number of our attorneys are included thereon.

Dean Laing was named one of the Top 10 attorneys in Wisconsin for the third time. He was also named one of the Top 50 attorneys in Wisconsin for the twelfth straight year. In doing so, he is one of only six attorneys out of over 15,000 attorneys in Wisconsin—and the only commercial litigator in Wisconsin—to make the list all twelve years. Dean was also named one of the Top 25 attorneys in Milwaukee.

Seth Dizard and Patrick McBride were also named among the Top 50 attorneys in Wisconsin. This is the fifth time that Seth has made the list. Seth was also named one of the Top 25 attorneys in Milwaukee.

Doug Dehler, Jim DeJong, Pete Faust, Bob Gagan, John Gehringer, Joe Gumina, Greg Lyons, Greg Mager, Joe Newbold, Chad Richter, John Schreiber, Jason Scoby, and Steve Slawinski were also named Super Lawyers, a recognition given to the top 5% of attorneys in Wisconsin. Jim DeJong, Pete Faust, John Gehringer, and Greg Lyons have made the list for the past 10 or more years.

Erica Reib was also named Rising Stars, which is limited to 2.5% of the young attorneys in Wisconsin.

We are extremely proud of these recognitions, but even more proud of the quality of service we provide to our clients.