# AN EDUCATIONAL BUSINESS SERIES FOR SUCCESS: SETTING IN PLACE AN EXIT STRATEGY WHEN THE TIME COMES AND MINIMIZING THE POTENTIAL FOR CONFLICT

In our last article, we reviewed why creating a buy-sell agreement can protect the owners of a company and help guide the process of a business succession plan. In this post, we will review how to create an exit strategy and minimize conflict when it comes time to begin to transfer the business.

**PART 2 – SETTING IN PLACE AN EXIT STRATEGY WHEN THE TIME COMES AND MINIMIZING THE POTENTIAL FOR CONFLICT**

Whether it's in personal relationships or business, the old song is right: "Breaking up is hard to do." Sure, you go into the company with starry eyes and big dreams, but you also must be a realist and know that things could go south quickly and unexpectedly — and splitting up can get ugly fast.

The best way to ensure a smooth transition when the time comes is to devise an exit strategy that will minimize the potential for conflict. A well-designed buy-sell agreement can act as your road map for how the business's owners will act and respond in the case of certain triggering events. Think of it as a prenuptial agreement but in the business world, and keep your focus on the goal of making the breakup go as smoothly as possible.

Although a buy-sell agreement makes it sound like someone is buying and selling a business, what it really does is sets out the circumstances under which the business's owners can sell their interests, who can purchase them, and the value of the interest. Let's take each of those aspects separately and delve deeper.

***Triggering Event***

When a business owner can sell his or her interest is generally called the "triggering event." Just as its name implies, the triggering event is what sets the buy-sell agreement in motion, and it generally occurs with the death, illness, disability, retirement, divorce, or bankruptcy or insolvency of an owner (partner or shareholder). Alternatively, an owner just may simply want out of the business for personal reasons, or you may want to terminate the employment of one of the business's owners within the company. A buy-sell agreement can cover any, some, or all of these events, depending on the preferences of the company's owners.

***Who Can Purchase the Interest***

One of the best parts about being involved in a closely held company is that its owners get to decide who their co-owners are – usually other stockholders. A solid buy-sell agreement maintains this owner freedom by specifying who may purchase an outgoing owner's interest in the business. For instance, the owners may agree that their spouses or children will always have first dibs on their ownership interests.

***Valuation***

The importance of placing a value on the ownership interest while in calm, non-volatile times cannot be overstated. When a triggering event occurs, emotions can run high, and depending upon the circumstances, so can animosities and other unflattering and unproductive feelings. In other words, this is not the time you want to be haggling over the price of an owner's interest in the business. Leaving the price open until that point could result in different owners wanting to use different valuation formulas or disagreement on selecting a professional appraiser.

Accordingly, to avoid problems regarding valuation, the best course of action is to have it determined before any kind of triggering event and while everyone is still working collaboratively toward common goals. This value then gets memorialized in the buy-sell agreement, and once it must go into effect, owners don't have a lot of room to complain about it. However, since the value of a business will change annually, so should the value be updated annually. If such value has not been updated for 18 (or 24) months prior to the Triggering Event and is not covered by a formula which automatically updates the value, then the value should be obtained by an appraisal of the business by an appraiser qualified to handle such job.

Just as with a prenuptial agreement, a buy-sell agreement is tailored to fit your individual needs. Just like no two marriages are alike, your buy-sell agreement should not simply have boilerplate language either. While you may be able to find templates online, a buy-sell agreement should reflect the specific needs and circumstances of an individual business to avoid the risk of facing legal challenges later.

The main goal, after all, is always to put in place an agreement among business partners as to what the end of a relationship will look like and leave as little room as possible for conflict, especially in terms of litigation, the costs of which could hamper, or even destroy, what's left of your business. Besides, at the end of a relationship — business or personal — no one needs added stress, and that's exactly what a properly drafted buy-sell agreement can help eliminate.

Check out our next article in our business series explaining how ownership interests can be transferred if one or more of the owners can no longer or do not want to continue in the business.

If you have questions about your company's succession, please contact a member of our Estate and Business Succession Planning team.

Other articles in this series:

- An Educational Business Series for Success: Why Buy-Sell Agreements are Necessary Even if You Don't Plan to Sell Your Company Soon

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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.

## JOSEPH GUMINA, GRANT KILLORAN, AND ERICA REIB PUBLISHED IN THE WISCONSIN LAWYER

An article by Attorneys Joseph Gumina, Grant Killoran, and Erica Reib entitled “COVID-19 Vaccination Mandates: What Now?” is featured in the March edition of the State Bar of Wisconsin publication *Wisconsin Lawyer*. In their article they detail the challenges mandates create and the current legal status of workplace vaccination requirements.

Read the full article here.

## TREVOR LIPPMAN LEADS EFFORT TO SECURE $5.4 MILLION SETTLEMENT IN WILL FRAUD CASE

Attorney Trevor C. Lippman, a member of the firm’s Inheritance Litigation Team, recently resolved a two-year dispute representing the siblings of a deceased physician involving allegations that the opposing party conspired with an attorney and two witnesses to create a fraudulent will after the death of their brother.

In what can only be described as a tragic, yet fascinating case, the partner of a deceased physician had his purported estate planning attorney (no longer licensed) produce a copy of a will to the decedent’s siblings approximately one week following their brother’s death. Under the older will, the siblings received the entire multimillion-dollar estate. Under the new will, the siblings would receive $100,000.

Attorney Lippman fought to allow for a full investigation surrounding the purported new will over the objections of the decedent’s partner, who sought, with the purported drafting attorney and two witnesses, to rush this matter to resolution.

What began as an investigation into possible allegations of undue influence and lack of capacity quickly turned into an investigation into the authenticity of the new will and the attorney, witnesses, and partner’s involvement in the possible fraudulent creation of that will after the decedent’s death. The investigation involved the review of thousands of documents, telephone records, text messages, and an ink testing analysis to test how old the ink was on

notes the drafting attorney purportedly drafted in 2017.

Shortly before a scheduled five-day trial before the Milwaukee County Circuit Court, Attorney Lippman successfully negotiated a mediated resolution which resulted in the admission of the older will that had identified the siblings as the sole beneficiaries and the siblings' retention of approximately 88 percent of the estate, or $5.4 million.

The Inheritance Litigation Team is fortunate to work with incredible clients who have questions or concerns about a loved one's estate plan when there are legitimate questions surrounding that estate plan, whether it be through a will, trust, or payable-on-death transfer.

Upon the completion of this mediation, O'Neil Cannon was humbled when its clients, unprompted, shared their thoughts about their experience with Attorney Lippman and the Inheritance Litigation team. Here is what they wrote:

> ***"Professional Integrity and a Very Successful Outcome – Our Experience with O'Neil Cannon.***
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> *After our brother died unexpectedly at the age of 60, we had serious concerns about the copy of the will that was produced that did not comport with our understanding of our brother's estate plans. There were also several oddities with trying to obtain the will itself and with the dynamics of the relationship our brother had with the purported beneficiary under the new will.*
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> *As this was the first time we had ever been involved in a legal action, we needed a lot of support and explanation from our attorneys. Their communication skills are second to none and they answered all our questions quickly and guided us through all the issues as they developed. Trevor began the investigation and through many twists, turns and complications was able to discover that our concerns were justified. We cannot say enough about Trevor. He is smart and hardworking, he digs deep into the facts, pulling layer after layer together to tell the true story. He kept us informed of his progress and gave us excellent advice. He is stellar in the courtroom. We cannot recommend him highly enough and we are so proud to have been represented by Trevor. The rest of the team at O'Neil Cannon played an important role to support this lengthy, complex endeavor."*

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.

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## ATTORNEY JOSEPH GUMINA RECENTLY QUOTED IN THE DAILY REPORTER

Attorney **Joseph Gumina** was quoted in The Daily Reporter on February 17, 2022, in an article titled “In absence of federal mandate, many companies still encouraging vaccination for employees.” In the article, Gumina, who leads OCHDL’s labor and employment practice group, discusses what some employers are doing to encourage their employees to get vaccinated. For some construction companies in Wisconsin, the answer was a cash incentive. “The most common cash incentive that I have seen is $100,” said Gumina “Cash incentives are only one of the ways companies have tried to encourage vaccination. Some have brought COVID-19 vaccination clinics to their offices to make it easier for employees to get shots. Others have offered workers an additional day of vacation for getting vaccinated,” Gumina said. “I have seen one employer try to encourage its workforce to become vaccinated by informing them that they would not be permitted to return to the office from remote working unless they are fully vaccinated,” he added. Whichever course you take, remember OCHDL is here to protect your interests. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues related to workplace safety issues arising from or related to COVID-19.

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## ATTORNEY JIM DEJONG FEATURED ON WISN AM 1130

Attorney Jim DeJong was recently featured on *Money Sense* presented by Ellenbecker Investment Group on WISN AM 1130. On the show, Jim provided an overview of the implications of the COVID-19 pandemic on the M&A market. He discussed what a business owner planning to sell a business should be doing now to prepare the business to attract qualified buyers and to obtain the best price. Jim also discussed the importance of business succession planning.

The recording can be accessed here.

# THE WILAW QUARTERLY NEWSLETTER

**Newsletter Article Highlights:**

- Determining the Citizenship of Businesses
- Why Buy-Sell Agreements Are Necessary Even If You Don’t Plan to Sell Your Company Soon
- U.S. Supreme Court Issues Stay of OSHA’s Vaccination-or-Test Rule
- New Federal Regulations Take Aim at Health Care Provider Billing

**Firm News:**

- Firm Elects Britany Morrison and Nicholas Chmurski as Shareholders
- Super Lawyers Recognition
- Greg Lyons is Honored as Attorney of the Year by the Top 100 Registry
- Joseph Gumina Recently Quoted in the Milwaukee Business Journal
- Grant Killoran Published by the Association of Corporate Counsel
- OCHDL Ranked in 2022 “Best Law Firms”

Click the image below to read more.



# GREG LYONS IS HONORED AS ATTORNEY OF THE YEAR BY THE TOP 100 REGISTRY

Attorney Greg Lyons is being honored as 2022 Attorney of the Year in the State of Wisconsin and is being featured by the Top 100 Registry in its Top 100 Lawyers magazine. The award distinguishes the highest level of competence and dedication in the field of law according to

the Top 100 Registry. The Attorney of the Year is determined by the Top 100 Registry's board of esteemed legal advocates. This is the second "Lawyer of the Year" award recently for Greg. He was also recognized by Best Lawyers® in the practice area of Litigation–Insurance for 2022. Both recognitions are significant, as only one lawyer is honored in his or her location and practice area.

"I am honored to be chosen by my colleagues and experts in the legal field for these awards," Greg said. "My goal has always been to obtain the best results for my clients in a cost efficient manner."

Greg represents clients in the prosecution and defense of complex commercial litigation. His extensive experience in commercial litigation has prepared him to successfully represent large corporations as well as small businesses and individuals. He also devotes a large portion of his practice to individuals in inheritance litigation. Greg has successfully litigated many will contests and trust disputes throughout Wisconsin. He has accomplished tremendous results on behalf of trustees, personal representatives, and power of attorneys in large complicated disputes. Greg has appeared in state and federal courts in numerous jurisdictions. He is a member of the Wisconsin state and federal courts, the Seventh Circuit Court of Appeals, and the United States Supreme Court. Greg also serves as the chairperson of the firm's Ethics Committee.

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## AN EDUCATIONAL BUSINESS SERIES FOR SUCCESS: WHY BUY-SELL AGREEMENTS ARE NECESSARY EVEN IF YOU DON'T PLAN TO SELL YOUR COMPANY SOON

Long before a closely-held business is readied for sale, it should be protected by the owners creating a buy-sell agreement. In short, every co-owned business needs a buy-sell, or buy-out agreement the moment the business is formed or as soon after that as possible. A buy-sell, sometimes called a buy-out agreement, protects business owners when a co-owner wants to leave the company (and protects the owner who is leaving). It also contemplates dealing with unforeseeable catastrophic events, such as owner death or disability. We recommend business owners create a buy-sell agreement as soon as the business is formed because, as is often said: "It's a lot easier to get an agreement in place when everyone's in agreement."

We have broken down the key elements and thinking that go into a buy-sell agreement into a series for business owners to find success.

## PART 1 – PROVIDING A MARKET FOR THE OWNERSHIP INTEREST OF THE CLOSELY-HELD BUSINESS UPON A SPECIFIED "TRIGGERING EVENT"

Being able to work with people you know and trust in a closely-held business can be an invaluable experience, but among the many practical advantages is that the partners hold a great deal of control over their own companies. With fewer government regulations restricting their actions and decisions, owners can choose what to do with their profits—pay themselves, donate to charity, reinvest, etc.—and they generally enjoy the freedom to try out new ideas and pursue higher risk, higher yield options that might not fall in line with a corporate shareholder's more conservative judgment.

That said, the many pluses of closely-held companies do come with some minuses, and one of those is the potential inability to sell the business or some of its ownership interests when necessary. That time may come for a variety of reasons, both unexpected and planned from death and illness to retirement, and the so-called "triggering event" can wreak havoc on the enterprise.

### *More on Triggering Events*

Most commonly, a buy-sell agreement kicks in at the death of an owner and requires the surviving owners or the company to purchase the deceased owner's interest from their estate. Death isn't the only possibility of a triggering event, however. Any number of situations could arise that could send a business into disarray, including the following:

- Sudden illness, disability, or incapacitation
- Retirement
- Divorce
- Termination of the employment of the owner within the company
- Bankruptcy or insolvency of the owner in question
- Lack of desire of owner to continue in business

The reality is that without a buy-sell agreement in place, closely-held businesses run a high risk of not being able to be sold, either in whole or in part, when a triggering event happens. The best course of action to prepare for this scenario is to create a buy-sell agreement and provide a method for valuing the business within the agreement so you can avoid potentially catastrophic consequences to your business later.

### *The Importance of a Buy-Sell Agreement*

Having an exit strategy in place, notably in the form of a buy-sell agreement, is an excellent way to help ensure your business doesn't go under when a triggering event occurs. A buy-sell agreement that has already been agreed to in advance, independent of emotions that could be heightened during challenging times, can help resolve matters quickly and in the best

interests of the business.

Having a buy-sell agreement in place when emotions are running high is also beneficial for valuation purposes. Even if you can come to a reasonable, fair value, it can be even more challenging to get a potential buyer to agree with you on the acceptable sale price, especially depending upon the circumstances of the triggering event.

Valuing the business during the calm times provides not only an unbiased valuation, but also a market for the ownership interest in the enterprise upon a triggering event that is specified within the buy-sell agreement. Quite simply, having a buy-sell agreement in place ahead of time can mean the difference between a successful passing on of the business and its folding; the agreement can provide a market for what may be an otherwise unmarketable interest that no one would want or perhaps even be able to buy. While drafting a buy-sell agreement helps put a number to the value of each business owner's interest, it also makes sure that the remaining owners have complete say over who their next partner will be or even whether they want anyone else in the business at all. Moreover, with a buy-sell agreement in place, surviving or remaining owners are less likely to have grounds to pursue litigation—which can be expensive, time-consuming, and end up harming or even destroying the business.

Check out our next article in our business series covering what type of exit strategy needs to be considered in a transition.

If you have questions about your company's succession, please contact a member of our Estate and Business Succession Planning team.

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## ATTORNEY GRANT KILLORAN PUBLISHED BY THE ASSOCIATION OF CORPORATE COUNSEL

Attorney Grant Killoran recently published an article for the Association of Corporate Counsel's (ACC) resource library. Headquartered in Washington, D.C., the ACC is a global legal association serving the needs of in-house legal counsel around the world.

The article, entitled "Ten Considerations Regarding State Government Public Health Powers to Mandate COVID-19 Protective Measures and Vaccination in the United States," discusses the existing public health law framework in the United States and summarizes recent decisions by the United States Supreme Court arising from cases challenging public health measures to combat the COVID-19 pandemic.

Read the full article here.