Unedited transcript of

# Business Succession in Estate Planning

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## Speaker(s)

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>>: All right. Welcome back everyone from our quick break. And as promised yesterday, I told you that we would be able to do a deeper dive into succession planning when we begin to discuss it in our insurance section, and so I have another repeat performer here to talk about succession planning. So for this section, we're going to hear from Amy Lonergan, who is a partner -- and she and I have done this presentation together for a long time, but we also partner together on a number of clients. So Amy, thank you for once again agreeing to do this for me and for everyone. And please take it away.

>>: Great. Thanks, Katie. Okay. So as Katie mentioned, we are going to talk about business succession planning today and this is meant to be a very high-level overview of some topics that can be somewhat complex, and so I can't, in our limited period of time, dive too deep into some of the more tricky elements here, but I wanted to give you a good overview of the concepts that come up in this type of planning and things that you can be kind of on the lookout for and some tips and tricks that can hopefully help you as you progress in your careers. So I'm going to kick it off by just talking about what succession planning is and what we're really addressing during this section today. So this is really a process where you have a client who typically owns a business either independently, the client owns 100% of the business and they started it themselves or with a partner or two. But they usually will have more than the majority share, and you are helping this client devise a structure or a series of steps that will allow for the passage of the business, which is an asset, to either the client's next-generation, often the children, or sometimes, to other key persons who are

already involved in the business. And we're almost exclusively talking about closely held businesses, so you'll hear that phrase quite a bit. So this is not a company that is -- where the shares are traded on a public exchange, on the NASDAQ or anything. This is usually a business that is closely held by one or more individuals. And the transaction that you're planning for here is really not just one transaction. You might be setting up a plan for a number of different scenarios. So the client could transfer their business because they want to retire or they just want a plan in place for what would happen if they became disabled, either suddenly or over time due to mental disability or eventually everybody does die and what should happen at the client's death? And thinking about the right way to protect the business and get the asset to the right people is really the goal here. And so usually, you'll have a plan for what happens if they die because you want to make sure that that is covered as sort of a safety yet, but then there will also layered on top of that be a plan that moves the asset in one or more ways to next generations or to other individuals during their lifetime. So you kind of have both planning hats on at the same time here. We want to make sure those plans fit together, too. And we'll talk generally about some basic structures that are used to accomplish these strategies. So gifting is really a key here. But there's also subjects like buy-sell agreements which can be in place between one or more business owners. Life insurance will play a key role and trusts sort of layer in throughout all of this planning. I'm going to talk about that. And the last thing I want to mention in the introduction piece is as you progress through this type of planning with a client, it's really critical for you to be coordinating with all of the other advisors that are part of that client's world. They should have qualified accountant or CPA who's preparing their tax return and advising them on taxes generally. Often there's a life insurance agent that comes into play if life insurance is part of the strategy and they should have a financial investment or investment advisor or wealth manager who is the one that is assisting them with sort of the postretirement number crunching on what type of cash flow needs they'll continue to have to be comfortable for life, and we'll talk about how that all comes into play when you're putting a plan together, but, you know, either you or one of these other advisors should be the quarterback that is kind of keeping everyone in the loop as this plan is both being crafted and implemented. And the person that serves as the quarterback is often just who the client is most comfortable with, either they've had the longest relationship with or they talk to that person the most for whatever reason, and it's typically either the accountant, the financial advisor, or the attorney. And so you know, you may be in that role, but as long as someone is in that role and they're doing a good job keeping everyone else updated, that's just fine. And, of course, you want to make sure that your client is comfortable and given you expressed authorization to have open conversations with all of these advisors on their behalf. You want to make sure you have that clear in advance and if that ever changes, the client needs to let you know because you have this duty of confidentiality at all times, and if they realize it's in their best interests for you to be openly sharing information, that usually works very well but some clients can be very particular about what type of information is shared with whom. So just be mindful of that and talk about that in advance. So some more kind of basic concepts as we get into this. The family harmony concept is something we circle back to quite a bit because usually, you have a business owner who owns a business that they want their children to either take over or continue to run as an owner, or simply financially benefit from. Or some combination of those three goals. And often you'll see that there's one child who has been involved in running the business either from the beginning or for some period of time, and they're best suited to sort of take over the management and control of that business, but there could be other children who want to and the client may want them to equally share in the client's estate, but where this business is properly their largest asset, that can be tricky to make sure that you're not creating a plan that will do more harm than good long term. So you want to be thoughtful when you speak to the clients about concepts like favoritism and sibling rivalry, especially if you're going into the path of unequal distribution. And I have had several clients who feel pretty strongly that the one child that has been running the business and really putting all the time and effort there deserves a larger share of what is their total estate because they have earned this kind of seat at the top of the helm of the business itself and that as you might expect doesn't always sit well with the other children and so having conversations about whether that's really the right path and if it is, you can't really tell your clients what to do. You can just implement their wishes and intentions and with your guidance. And so if you end up in a world where there is some unequal distribution going on, either during life or at death or both, having the client talk to the family members about that in advance is usually the best scenario. Some clients don't want to do that. They want to stay tight lipped until after their passing and everyone finds out. But grief is a really tricky thing and grief layered with perceptions of inequality can be really damaging long-term. Just having that kind of counselor's hat on as you have these conversations and suggesting that they all have a meeting together with you and the clients, patriarch, matriarch, and the kids who can ask questions and understand their thinking in a way that is, you know, sometimes if you're in the room everyone's on their best behavior. Just some tips because that topic alone I could probably spend 45 minutes talking about and it comes up quite a bit, and it's a really important piece of what we do, sort of the nontax aspect of this role. And then you can get into a little bit of encouraging clients maybe not giving businesses to children who don't want them or who have never been involved in running the business and there's a way for them to potentially receive economic benefit from a business, but not receive the management duties and there's ways to split that up and we'll talk about that. That comes up in the context of voting and nonvoting interests. It's not uncommon for one client to own, you know, an entire S. corp or C. corp or however it's structured, an LLC and they have 100%, but as they start making transfers during life or if they're contemplating how the transfers will be made at their death, splitting up their ownership into voting and nonvoting interests can create a scenario where everyone's really receiving the interests that makes the most sense for them. And just keep in mind at all times that there are scenarios where just selling the business to an unrelated third party and receiving that liquidity can put everybody in the best place. It may not be great for a business to be forced down to a generation that doesn't really have an interest in running it or isn't qualified to run it. And a lot of times just taking that cash, taking liquidity and dividing that equally puts everyone in a much better spot long term. It's a harder decision for a lot of clients to make, but it's something that's typically always available, so if things really become difficult, having those conversations and suggestions. Just keeping that in mind can be helpful. And then for clients who really do want to see their children take over their business, which again is not as common as it used to be, but this concept of educating and training the next generation of business owners is really critical because a lot of businesses will move down a generation and fail and that's happened numerous times across the country. So setting them up with the tools to do the work in the best way possible is really helpful. Having the resources and the freedom to manage the business alone is also something that really goes a long way and really thinking about that and there are consultants who will come in and put these plans in place for these types of families, but if you're acting as a trusted advisor and want to guide a client into how to do this in a really thoughtful, successful way, these are kind of some of the things you want to be talking about. There are scenarios where one child's managing the business and other children may own some of the nonvoting shares and so the concept of how they get compensated or how they're receiving value from the business asset comes up quite a bit. And for the client -- or for the child who runs the business and is an owner or manager, they can receive a larger salary from the business and receive sort of that extra level of benefit that way and nonoperating owners can receive dividends and profits from the business, which is more appropriate for them not having an active role. And then if there's tension between those two sides, which there often is, having a third-party advisory board can be really helpful, so the client can participate in who is the right people to sit on that advisory board and oftentimes, it's other people in the industry, friends or colleagues that they've known for decades who will not only know their intentions but have the best intentions for the business directly and having that kind of neutral board can really make a difference. They don't have to meet once a quarter, twice a year, but it can really be helpful to help keep everybody on their best behavior. All right. So now, you're sitting down with the client. These are tips on things you should be asking in the very beginning. Your client intake meeting, to make sure that you know everything you need to know before you start having these bigger, broader conversations. And so the first thing you need to know is how -- what is the business structured as? What type of entity is it? How is it organized for tax purposes? So it could be an LLC, it could be a limited partnership, it could be an S. corp, a C. corp, a sole proprietorship. The client is going to tell you what they think it is and you're going to ask for documents to confirm that that's the case, including tax returned. Operating agreements, tax returns. You need to see the physical evidence of how this business is structured, because it is amazing how many times they get it wrong. The smartest clients running the most successful businesses, this is just, you know -- this is the stuff the lawyers did way back when, when they first set things up and their understanding or memory of how this works is not always accurate. I would almost say -- it might be 50/50 the number of times clients have gotten it right. So definitely prove to yourself how the business is structured and how it's taxed. And then who owns it? Who actually is on the paper owning the shares or the LLC interest or whatever it is? Because I've seen a number of clients assume I own 100% of it, it's mine, I run, I do everything, but they forgot that they gave their spouse 2% when they first formed it back in 1983. So you need to go back to the original minute books, original records, confirm exactly who owns what before you can start moving things around and if they don't have those records, which a lot of clients, especially the smaller business community, they may not have a lot of paperwork that is oh, here's our operating agreement and here's our minute book with the shareholders. That may not exist or if it did exist ever, it's been lost for a long time. So you may have to go back and re-create that and that's kind of where you should start, whether it's finding it in their office or creating it and confirming it and restating it at this point is sort of step one. So you know, clearly talk about the nature of the business, what does the company do, how does it create revenue, what does the client do in that business. They may own it and they're the president or the manager or the owner or whatever they are, but what do they actually do? What's their real role? They probably have employees who have other roles and how does that all fit together? And then are their children already involved in the business? Sometimes, they are, sometimes, they're not. If they're not -- that's where you sort of start talking about third-party sales and this is really what the kids want to do? It's a delicate line to walk because this is the client's livelihood and their family and often the business itself is like another child. And so it's delicate, but there are ways of kind of bringing these things up in a framework that is really helpful to the client. And I think that's kind of what you want to keep foremost in mind. And then are there other key employees that should be considered as part of whatever plan you put together? Because you could have one or more kids involved in managing some aspect of the business, but there are other key employees who are really critical to keeping it going and being successful and you don't want to lose sight of them, either. And then you have real conversations, like what do you want to happen to the business when you retire? Some clients don't want to retire. What if you become disabled?

Sort of talk about having a safety net in place for that scenario. But ultimately, everyone's going to die, so what do they want to happen to the business at their death is sort of a real conversation that needs to be had, even if it's uncomfortable for them. A lot of business owners don't want to retire and never think they're going to die. Unfortunately, they do. And so one of the ways you could sort of bring them to the table if they're reluctant to really make the move -- if they came to you just because they want a will because their wife said they had to and they own this business, but they have no desire to put a plan in place as to what should happen with it and you've already seen some red flags with respect to kids and how things may not sit so well with everybody, if they're reluctant to come to the table and really put a thoughtful plan in place, I found that if you point out how their business would pass today, either under their current estate plan, which may not have been updated for decades or perhaps they don't have an estate plan, and then you're talking to them about intestacy laws in Massachusetts, if you point out unfortunately, you get hit by a bus tomorrow, I never use that phrase in a client meeting, but you can use something that leads you to there. Something unexpected happens to you tomorrow. Here's who's going to own your business as a result based on what's in place now, or what's not in place now. And that reality sometimes gives people the kick that they need to really start working on a plan that is consistent with their wishes and figuring out their wishes. Having those conversations can be helpful to point out what the reality of the situation is. And you also want to talk about life insurance. A lot of clients already have one or more life insurance policies out there and you want to get all those details, as well. What is the death benefit that it pays out? Who owns it? Does the client own it? Is it owned by a life insurance trust that they set up ten years ago and they forgot about? Who are the beneficiaries? And you want to see the piece of paper that names the beneficiaries and not take their word for it. Sometimes, that needs to be updated. And is it a term policy? Is it a permanent policy? Is it a whole life insurance? Get your arms around what the current life insurance situation is. It's likely that you're building a transition plan that needs life insurance. They might need more, but understanding what they already have is going to be really critical. And then do they want to retire? When would they like to retire? What are they going to do in retirement? And how much do they already have set aside in retirement assets? Is that going to be sufficient? Very often the answer is no for business owners. They tend to fund their own retirement last because they're reinvesting capital into the business consistently. And that's where -- you know, these last three bullets really are sort of in the jurisdiction of the financial advisor. You are not, as the attorney, expected to calculate what their cash flow should be in retirement and whether their assets are sufficient. That's outside of your world. And the advice that you should provide to the client, but you want to bring in someone who is qualified and able to do a good job assisting them with those kinds of calculations because knowing the number that they need to hit either on an annual basis or as a total, that's a really important starting point and everything kind of backs into that. So these are the actual strategies that come into play in this scenario with business succession and I'm going to go through this really generally. The first is just we'll talk about gifts, outright gifts, immediate gifts. So this is, you know -- in its most simple form, a client owns 100% of the business, signs a document giving 100% of the business to one or more children. Outright gift, client no longer owns anything, it's very simple, which is a good thing, but it's also not -- there are more effective ways of doing this. I've never actually seen a client just give 100% of the business outright to a child. There's usually some layering and nuance that will create a better tax result or just spread the transaction out a way that makes sense for everybody for a number of reasons. For any gifts that they do make, whether it's one huge gift or a series of smaller gifts, the client ultimately will be losing some amount of control once they sort of cross that 50% threshold or depending on how they've structured voting and nonvoting shares but control is a real concept you want to focus on and think about in any gift strategy. And the income and the cash flow from this business asset that's being gifted follows the new owner in most cases. So thinking about whether that is going to be disruptive is important. And carryover basis is just a concept that's really important to think about with any type of lifetime gift. So this is not specific to businesses or succession. It's really just lifetime giving. If you give an asset away during your life, that asset takes its original or its carryover basis, not original, but I should say the basis that it held -- that it had in the hands of the person who gave it away. So the donor owns an asset with a basis of $10, and it's worth $100, gives it to their child, the child now owns the stock worth $100, but it has a $10 basis. So if they sell it, they have to pay capital gains tax on that $90, which is the gain. Same thing happens for the business and for anybody that founded or created their own business, their basis is usually very close to if not 0. And so any gain that would ever be incurred or created because the child or whoever receives the gift ultimately sells the business one day, they're going to pay a significant amount of gains tax because their basis is going to be so low if they receive it through a lifetime gift and we'll talk in a minute about how structuring this kind of transfer at death allows you at least as of today in our current estate planning laws, allows you to have a step-up in basis which can be really beneficial. So carryover basis is something to never lose sight of. It can really throw a curveball into the taxes you think you're saving by moving the asset out of your estate early through a gift, but if it's going to be sold and you're giving them a really low basis, you may not actually be helping them as much as you think. But, you know, if you are making a gift, you are giving it to them at the current or unappreciated value. So whatever the business is worth today is the value of the gift that you are making, and your gift tax exemption is going to apply and shelter that, but if the business grows over the next ten years, all of that extra appreciation that it has grown to between the time of the gift and X., all of that is outside of your estate, it doesn't need to be -- it doesn't need to be sheltered by your gift tax exemption or your state tax exemption so that's the leverage. The sooner you can make a gift, the better, generally, for assets that are intended to appreciate, but you want to keep the basis. So that's the leverage of the federal gift and estate tax exemption moving the assets out sooner than keeping them until you die and the value is much larger. And then in Massachusetts, assets that you move out of your estate through a gift really does directly reduce your Massachusetts estate at your death and also the amount of Massachusetts estate tax you have to pay because Mass doesn't really bring in prior gifts when calculating your estate tax because there's no gift tax in Massachusetts. It may be worth, especially to a client who today doesn't have an estate that's going to be taxed at a federal level as far as we know with that being a moving target somewhat, but for smaller estates, estates under $5 million, moving out during life really does shrink that Massachusetts estate tax that's due at death. But again, keep the basis in mind. So fractional interest gifts are another version of this gifting strategy where instead of just giving 100%, the client is giving slivers along the way. That could be 5%, it could be 30%, but it's a smaller amount than 100, and it's usually much smaller than 50% which allows you to discount the value of the gift at the time it's made and use less of the client's exemption to shelter the gift. So if an asset would otherwise be worth $1 million, I'm going to give 10% of it away. That's not really $100,000. We can actually shrink the value of that to something like 65 or $70,000 because you can discount that $100,000 value for concepts like lack of marketability. I only own 10% of a business, who's going to buy that from me? It's not very marketable. It's a minority interest. It doesn't give me any control so that's not very valuable. And so you can shrink the value of the gift by layering on these discounts, which is something that planners do all the time and it's really successful. You have to keep in mind that you need a valuation for that because this is -- the shrunken value, the discounted value, you need to report on a gift tax return and you need to have a valuation report associated with that supporting the reason why these discounts make sense. And that they're proper in this scenario. So it's another level of costs and expense and time, and the business needs to kind of produce a lot of information to go through any kind of valuation. So just keep in mind, the valuation component can be a little disruptive, but it's usually worth it at the end of the day. And then there's the concept of holding on to the asset until death and not making lifetime gifts, but transferring the asset at death, and the benefit to the client in that scenario is that they can keep all the control, their entire life. They're not giving anything away during life. It also gives the asset, the business a step-up in basis for tax purposes, so it's now instead of being worth zero, the basis, it might be -- it's going to be worth whatever the fair market value of the business is on the client's date of death and if it's going to be sold shortly thereafter, that can really shrink the amount of gains tax that would otherwise be paid by the recipients of the business. But at the same time, all that is now -- it's still in the client's estate, it's taxed in their estate so you want to run some numbers on what's the Massachusetts tax on that full value, what's the federal tax on that value, that's where the numbers get so much bigger. So this is kind of the numbers game is giving it away during life and at death, assuming that all other things are equal, which they never are. But, you know, in general, lifetime gift is -- you kind of have this continued opportunity to shift value to the next generation or to whoever is supposed to receive these assets, but this last bullet says annual increases in estate and gift tax exemption, technically, the way the law is written right now, we're going to see the estate and gift tax exemption presumably tick up for inflation until we get to 2026, and then it's supposed to probably go down by half. But we're waiting, clearly, to see if there's some other legislation that kicks in, either this year or next year that will drastically reduce that estate and gift tax amount. And so we may have this window right now where you have exemptions available to you today, $11.7 million per person. And if you can use that today or in the next month or two, really move a large asset out of your estate and then the exemption goes down, you've really accomplished quite a bit by moving assets out and, you know, I'm not going to get into grandfathering and all the other concepts that go along with that, but just be aware that that exemption amount is somewhat of a musing target. It's supposed to go up, and then go down. It could go down dramatically much sooner, nobody knows, including the people making the decision. Okay. I'm going to talk about installment sales quickly. So this is a different strategy of essentially moving an asset sort of usually in one big chunk to the next generation or more often to a trust for the next generation. So instead of giving away the business, either in one fell swoop or in little chunks, a client could sell the business to their children, but the children often don't have the right amount of liquidity to buy the business, and so whether it's the children directly or a trust for their benefit, that often also doesn't have enough liquidity to just buy the business outright. Often, they will be buying the business in exchange for a promissory note and the promissory note is structured in a way that makes installment payments back to the client or the seller of the business. And that can be a really beneficial arrangement because it transfers the asset out of their estate, and then they're just left with these income payments or the stream of income that is coming to them on an annual basis and you can structure that in a way that is consistent with the income that they might need for living expenses during retirement. Maybe not all of it, but the excess amount that's going to get them there and be comfortable. All of those numbers are going to work together to try to figure out the best structure for how phthisis installment payment process would be made. There needs to be interest paid on the note and it needs to be at least equal to the section 7520 rate, which is a section in the IRS code that gives us kind of this floor or minimum amount of interest that needs to be charged in certain scenarios in order to avoid gift tax implications. And so this type of installment sale strategy is one of the scenarios where you need to charge interest at least equal to whatever it is in the month that this transaction takes place. You can always charge more and I've had clients tick up the interest rate because they wanted higher payments and that's okay. But you can't charge less. And, you know, it could be a steady stream of payments that are made over specific term of years that could match up with the income that the business is expected to generate, so the cash flows being created from the business itself. Or it could be small, interest-only payments and a large balloon payment at the end. Then you have to think about how that balloon payment is going to work, how to tie it in with the estate plan. Sometimes, the balloon payment is structured at a time when the client is expected to be deceased and all their other assets are passing to the kids. So it's offsetting that. There's a variety of ways to do that. But this is usually not being sold to the kids directly in exchange for a note. It's almost always going to a trust for the kids in exchange for a note. And the trust is giving the note, and then the trust owns the business, but it's for the kids' benefit. If that's the case, you can structure it so the trust is what we call an intentionally defective grantor trust or I think today we really just call it a grantor trust because the intentionally defective part I think is confusing for clients. And this means that the income that the trust creates is taxable to the original owner, to the grantor. And so they aren't really being charged any income tax on these payments that are coming to them from the note, because it's kind of a wash. They're the income tax owner on both sides of that transaction, so that can be a really effective way of not only getting them the tax flow, but not having them taxed on it during their life. And then I just really want to quickly mention a grat, because a grat can be a really effective way of doing some succession planning. It's not a one-size-fits-all for business succession in general and it's not really used for moving an entire business over to the next generation, but it can be really helpful for businesses that are rapidly growing and expected to have either huge or even just marginal amounts of growth and appreciation over, you know, the next let's call it two to ten years. A grant generally in a nutshell is a planning strategy where the grantor, the donor, puts an asset into a trust, and the way the grat works, it's set up for a fixed term of years. It's usually two to five years. Usually, it's a little bit longer than that, but not often. And the grantor needs to get annuity payments back during the term that are equal to the full value of what they put into the trust, plus an amount of interest again going back to that 7520 rate, there's a specific interest rate that's set every month that relate to grat payments. And that's the minimum amount of interest that you can kind of give back. And so this month, the grat -- that interest rate is 1.2%. It's been really, really low this year, last year. We thought it was low two years ago. It's wild, 1% is very, very low. So basically, if you put a business that's worth $1 million into a grat, for five years, grantor is going to get back a stream of payments equal to $1 million, plus 1.2%. If the business value grows above 1.2% over that five-year period, then all of that extra growth and appreciation moves to the remainder beneficiaries of the grat, which again can be kids, it can be a trust for the benefit of kids. And because the grantor got back all the value of what they put in, there's no gift tax -- there's no taxable gift associated with that remainder amount moving to the remainder beneficiaries. So it's a way of moving assets out without using any gift tax exemption and without -- and it can be really beneficial for businesses that are growing at five, ten, 50% each year, if they're really popping. You can put in, you know, kind of freeze the value today on what you get back, and have all that appreciation move over to the next generation in a really tax-efficient way. I want to put it as a placeholder. We could talk 45 minutes about grats, but I'm going to give you a little bit of a sample and I don't know if you can see this because the text is small. But this was a grat that we did in 2019, and it was a $10 million business that was appreciating around 15% a year. Back in 2019, the interest rate that the IRS said was 3.2%. Still seemed low at the time, honestly. And as a result, after the three-year term, the remainder beneficiaries received, you know -- ownership of the business essentially equal to $2.9 million, rounding up a little bit, which saved about 1.15 in estate and gift tax, which isn't a shabby result for a three-year transaction. But I ran the numbers again last year because May of 2020, the interest rate had dropped from 3.2 to 0.8, 80 basis points. The lowest it hit last year was 40 basis points, it was crazy. Now, it's 1.2. But the difference if we did that same strategy about a year later and the interest rate was only 80 basis points instead of 3.2, the remainder beneficiaries would have gotten close to a $3.5 million, and the federal gift and estate tax savings would have been $1.4 million on that amount. So just to give you an overview of how grats work and how they can be beneficial. The lower the interest rate, the bigger the remainder in most cases for grats. So grats are cool. All right, buy-sell agreements I'm going to touch on quickly because they come up quite a bit in this -- in this world of business succession, but it's usually between the actual current partners, one or more -- sorry, two or more partners of a business, and it really can be incredibly beneficial, no matter how old the partners are, because you never know what's going to happen, but it sets up an arrangement where if something happens to one of them, the other one can receive, you know, the departing owner's ownership, and it sets all the terms in advance for how that transaction will take place. And so they both are kind of aware of it, negotiating it, agreeing to it now while everything is good, and not having to come up with those arrangements for negotiations during a really stressful time for the family, so it really solves a lot of problems, and it's a really good thing for business owners to have in place which can build into a succession plan overall. Usually, the buy-sell agreement is triggered by death, disability, incapacity, bankruptcy, by one of the partners lost their professional license, if it's a medical practice or law firm or dental practice, something like that, or just retirement. Setting up how one of them wants to retire and get out, how that's going to work. Really there is no shortage of ways of how this can be structured. It just depends on what both partners agree on, but the common scenario that we see for buy-sell agreements are things like installment sales based on current earnings of the business. I say current, but it should be the then-current earnings of the business when one of these triggers is hit and there could be a sinking fund because you want to figure out how the liquidity is going to be created by the partner who's remaining in the business and taking the ownership from the departing partner. So structuring that through an installment sale can be helpful. Creating a sinking fund where the business is kind of actively putting money into a -- effectively a savings account so that there's liquidity there to buy from whoever leaves, whenever that needs to happen, but otherwise, they both sort of own those proceeds. There's always loans that can be taken, but that's not always ideal. Life insurance is really something that comes into play here, especially clearly at the at-death trigger because life insurance would be purchased by the business and then the business would have that cash if one owner died to buy that owner's equity from their family, basically. And then determining how you value that interest at the time one of those triggering events takes place is something that is really important to agree on in advance. So you can say let's get an appraised value so an outside business appraiser comes in to do a full evaluation. That's a really thorough way of doing it. It has more expenses built into it. But it's pretty accurate. And I personally think that's the best approach. And usually, you need that business appraisal to be done, if it's a death trigger, the departing owner's estate tax return needs to value the business, and it's -- [Inaudible] But there's other ways of structuring it. You can use formula-based pricing. You can use book value. It just kind of depends on the nature of the business, as well, if it's the a material, asset-heavy business or a service business. There's no shortage of setting the value but the important thing is you come up with a process for setting the value. The last thing I wanted to touch on before we get into any questions is life insurance, like I said, it really does come into play with a lot of these strategies and it can be a really helpful tool to create this pool of liquidity when people are thinking how is anyone going to ever afford to buy this stuff? So it can be used not only to buy equity from one side at the time of an owner's death, but it can also really be used to help equalize the value of inheritance passing to the children who may not be receiving the business. So in its simplest form, one child receives the business because they're the ones involved in running it, and managing it, and the other children who are not in the business, are slotted to receive the proceeds of a life insurance policy, and there's ways of creating formulas to ensure everyone gets as close to equal as possible in that scenario because you have to make sure that the value of the business equals the life insurance proceeds and that can be a little tricky, but there's definitely ways of doing that. Life insurance comes into play for buy-sell agreements, for obvious reasons. It can be used to pay the estate taxes on a business, if you don't have any other liquidity, but the business is worth quite a bit, taxes are going to be due, how are you going to pay it? You need to get life insurance sooner than later. It can also be an extra source of income for the surviving spouse, especially if that's when the surviving spouse isn't retaining the business because it's just easier and better for the business to move to the next owner at that point. Life insurance can, like, help supplement a surviving spouse's needs in that scenario. And it can provide working capital for the business itself at a time when they're going through this tricky transition from one owner to the next. So I just wanted to cover why life insurance kind of weaves throughout this conversation quite a bit. And that's it for me. But I'm happy to go through any questions or anything else that's on people's minds.

>>: We had a couple of questions that come in. The first was, does the CPA for both the closely held -- and the shareholders also owe a fiduciary duty to the individual shareholders? Would the CPA be required to provide shareholders with copies of tax forms when the shareholder gets a new CPA? So I think they're getting into the weeds a little bit there, but I think the fund question is does the CPA need to provide the tax returns for the business to individual shareholders?

>>: That's a good question. I've never been asked that. I think some of it comes down to what the bylaws of the organization entitle the shareholders to receive. And there's certainly some reporting elements that are usually built into that which are typically standard financial reporting, the balance sheets and profit and loss statements, things like that. It could be that they get to see the tax return, but I think it just depends on that particular business and how it has its disclosures structured. And the CPA would be required to do basically, what their clients is saying to do. There's no separate CPA fiduciary duty to the shareholders outside of what the construct of the business would require.

>>: Right. Next question. What if the closely held business does not have the required number of directors? And I think you could spin that a number of different ways, but if they don't have the required number of a whole bunch of things, which we often find. Like you said, sometimes, when you ask the clients how this is structured, they have no idea and they have no paperwork to show how it is structured and so there is a lot of repapering that goes on.

>>: Yeah, I mean, if you do find that the bylaws say there should be five directors and there's only been two or three serving for a number of years, it's not really the end of the world. What we often do in that scenario is just amend the bylaws to be consistent -- as long as all of the people who have the authority to amend the bylaws are of the same mind, and are in agreement, you can basically have the bylaws say whatever makes sense for the business. So you're not locked into, you know -- the bylaws don't wag the tail, in other words. You can amend them so that the number of directors that should be serving is the new requirement. That's usually how we handle that.

>>: Any other questions anyone has if they want to type up for Amy, please do so while we have her. And then any sort of key takeaways that you want to share with folks on the succession planning piece?

>>: I think what's unique this year compared to other years where we've talked about this is if you have a client and not just a business, but their total assets are north of five or $6 million, you probably want to have these conversations about gifting sooner rather than later and the time crunch that we have in front of us right now not knowing how long this expanded $11 million exemption will be available to clients, it's real and the difference between doing something now and doing something a year from now, when their exemption amount may be much lower or if they die, when their exemption amount is much lower and pay more taxes, these are really -- these are big numbers. These are real concepts. And so having that awareness -- because and again, the business itself might be worth $3.5 million, but they might own a couple of vacation homes and have a life insurance policy in their own name and it's not too hard to get that number up to a place where the exemption does go down to $6 million. All of a sudden, they have a federal tax to pay. So thinking about that and again, these are individual exemptions. A married couple should still have I think $12 million to play with, even if the law resets. But we don't know. It could go down to three and a half. That was Bernie Sanders's proposal. There's a lot of unknowns. We're assuming worst-case scenario and planning for the law that we have in place today is kind of how we approach this. But that is -- there's a little bit of pressure there, it's a good reason to call a client and get in front of them and start talking about this and any other to do items you wanted to get done with the estate planning because it all dovetails together. But, you know, moving quickly with larger transfers or transfers that they may not be able to make completely free of estate tax down the road, it's not the only reason to sell a business. I certainly wouldn't push clients into it just for the tax planning, but if they're pretty close and they just need a little kick and they realize that doing it now versus doing it later will have a pretty big financial difference, that might be enough to kind of get them over the line. All you can do is spell it out for them and be a good advisor.

>>: That's exactly right. You can lead a horse to water, but you cannot make them drink.

>>: That's right.

>>: As we are well aware of. All right. If you have any other questions for Amy, just type those now while we have her. Otherwise, I'm willing to take any other questions that other folks have had that have come up for the other presentations that we've had today. So feel free to type those away and we can address those. Any questions that you didn't submit today or that weren't answered for whatever reason, please feel free to reach out to me or to the presenters for those. And if we don't have any other questions, I'm going to give everyone 15 minutes of their -- 14 minutes of their day back and we will get started again tomorrow at 9:30. And Amy, thank you very much.

>>: You're welcome! I hope everyone enjoys the rest of the program.

>>: Thanks, Amy. Bye-bye.

>>: All right. So I don't see any other questions coming in. So I will see everyone tomorrow morning at 9:30.