



DEALERSHIP SUCCESSION PLANNING

CAR DEALERS—DON'T GET STUCK WITH A LEMON FOR AN ESTATE PLAN

Automobile dealers spend their lifetimes building dealerships into profitable and valuable enterprises. Dealers know full well that the demands of the day-to-day operations are more than a full time job. Just like other hard driving managers and entrepreneurs, most dealers never find enough time for long-term planning. As a result, the following two issues are often overlooked:

- Who will succeed the dealer as the operator of the dealership?
What steps can be taken to minimize estate taxes that will be levied on the dealership?
Addressing these issues should be a priority for all dealers.

Who died and left them boss? You did...

Under the terms of the typical franchise agreement between the

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Hands off, Uncle Sam. Proper estate planning protects dealership assets and can drastically reduce the tax bite for the next generation.



WEALTH & SUCCESSION PLANNING

BWM&S ATTORNEYS PRESENT TO PEERS ON RESCUING OLD OR DEFECTIVE TRUSTS

Each year estate planning attorneys and trust officers from across Illinois take part in a two-day program offered by the Illinois Institute for Continuing Legal Education (IICLE). The objective of the "short course" is to address current topics of the day.

To accommodate the statewide audience, instruction takes place in Chicago and Springfield. Leading estate planning professionals are selected to present, and this year's list included two from the firm: Karen MacKay and Jonathan Michael.

MacKay and Michael shared the topic of "Rescuing Old or Defective Irrevocable Trusts: How to Fix Poorly Drafted

or Ineffective Trusts." They presented in Chicago and Springfield, respectively.

"All trusts were not created equal," says Michael. "Over time, a

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FIRM EXPANDS SHAREHOLDER RANKS WITH M&A SPECIALIST

Craig McCrohon became Burke, Warren, MacKay & Serritella's newest shareholder in July 2007, as he moved his practice to the firm from Holland & Knight.



Craig McCrohon

"Closely-held corporations demand firms with strong teams of lawyers specializing in all critical areas of business law," says Mr. McCrohon. "Burke, Warren remains one of the pre-eminent

Mr. McCrohon specializes in corporate, securities, and mergers and acquisitions law. He advises companies and boards of directors regarding corporate transactions, director and officer liability, corporate finance and regulatory matters. His work has included organizing bank holding companies, negotiating venture capital investments, drafting securities offerings, and providing general and negotiating joint ventures in Europe, China and Hong Kong.

independent firms that has survived the legal merger-wave and continues to value and serve such companies."

Mr. McCrohon is a graduate of Harvard University and received his joint law degree from the University of Pennsylvania and M.B.A. from the Wharton School of Business, and was a graduate student in law and economics at the London School of Economics. He worked with the legal staff of the United States Senate Committee on Banking, is listed in Who's Who in American Law, and served as President of the Board of Directors of the Technology Executives Roundtable of the Evanston/Northwestern University Research Park. He was also named by the Chicago Lawyer as one of the 40 Under 40 Outstanding Illinois Attorneys and listed as one of the Leading Lawyers in Illinois for corporate and technology transactions, a listing that recognizes the top five percent of attorneys as selected by their peers.

Mr. McCrohon can be reached at 312/840-7006 or cmccrohon@burkelaw.com. 

TRUSTS *Continued from page 1*

grantor's family situation may change due to economic circumstances, family relationships, or changes in tax laws. We



Karen MacKay

addressed key areas of concern, together with legal techniques to improve problematic situations."

Some old, irrevocable trusts become problematic after they have been executed. Unless the document is designed to be flexible, altering a trust to address new circumstances can be difficult.



Jonathan Michael

Michael addressed each of the following

areas in their presentations.

TRUSTEESHIP

The initially designated trustee may over time become unacceptable to the beneficiaries or may no longer be suitable. Many old documents do not contain trustee removal powers which creates challenges.

INVESTMENT PROVISIONS

The trust governing instrument may prohibit or mandate certain types of investments that are no longer advisable in light of current market conditions and investment philosophies. Such prohibitions or mandates may not produce a reasonable level of income, a reasonable rate of overall appreciation in the portfolio, or may conflict with modern investment standards for risk, diversification, and asset allocation.


DISPOSITIVE PROVISIONS

The trust governing instrument may contain provisions regarding discretionary income and principal distributions that result in a failure to provide beneficiaries with a reasonable

cash flow under current economic conditions. This problem arises particularly in a situation in which the trust mandates distribution of trust accounting income only, and does not contain the more standard provisions we see today allowing for discretionary principal distributions in addition to mandatory or discretionary income distributions.

DEALING WITH MANDATORY "INCOME ONLY" TRUSTS

Often, older irrevocable trusts provide for only mandatory distributions of trust accounting income to the beneficiary with no authorization for discretionary principal distributions. The trust income may have dropped significantly, imposing a hardship on the income beneficiary.

For additional information, please contact Karen MacKay at 312/840-7009 / kmackay@burkelaw.com, Jonathan Michael at 312/840-7049 / jmichael@burkelaw.com, or any other member of the firm's Wealth and Succession Planning practice. 

DEALERSHIP *Continued from page 1*

dealer's company and the manufacturer, the agreement terminates upon the death of the dealer. At that time, the dealer's estate can propose a successor operator to the manufacturer; however, there is no assurance that the manufacturer will approve the proposed successor. If not approved, the dealer's estate may be forced to sell the dealership within a fixed but short period of time at what



Marty Ryan

could be a fire sale price. Though Illinois and some other states have enacted legislation for succession if certain criteria are met, most manufacturers also provide a mechanism to avoid this scenario from playing out.

Most manufacturers will allow a dealer, during his lifetime, to designate a successor operator who meets their qualifications and who will take over management of the dealership upon the death of the dealer. With manufacturer approval, upon the death of the dealer, the successor will receive a new sales and service agreement, typically for two or three years.



Bill Kelly

It is in the best interest of the dealer and his family to work with the manufacturer to have a successor approved in advance, so that business can continue to operate smoothly after the death of the dealer. The long-term value of the dealership and the estate may hang in the balance.

You can't take it with you — but you sure can leave a lot more behind

While addressing successor operator issues, it is also important to focus on estate taxes that will be levied upon death.



Ira Levin

In general, unless the dealer has a surviving spouse and has taken the necessary steps to ensure a marital deduction for estate tax purposes, an estate tax of approximately 50% will be levied upon the dealer's assets (after the application of the exemption, currently \$2 million). Even with a successor approved by the manufacturer, the dealer's estate may

nevertheless be forced to sell the dealership in order to pay estate taxes.

Fortunately, the tax code allows for various strategies which, when properly implemented, can minimize, or even eliminate, the estate tax bite. Manufacturers, an important part of this mix, generally will cooperate with dealers in implementing these strategies.

For example, many dealers separate the ownership of dealership real estate from the operating business and, during their lifetimes, transfer the real estate to trusts for the benefit of their families via gift or sale. Rent is then paid by the dealership operating company to the trusts, thereby moving not only the real estate, but also the rental income, to trusts that are not included in the dealer's estate for estate tax purposes. Likewise, it is also possible to sell or make lifetime gifts of portions of the stock or interests in the dealership operating company to such trusts, thereby further shifting important assets away from the dealer's taxable estate.

When structuring any such shift in assets from a dealer's taxable estate, the plan must fit within the limitations imposed by the gift tax laws. The gift tax, in general, limits the value that may be shifted from a taxpayer's taxable estate during lifetime without incurring transfer tax, to \$2 million for a married taxpayer (assuming use of the spouse's lifetime exclusion). Nevertheless, with proper planning, this amount can be leveraged to allow an even greater shift of value.

The sooner steps are taken, the greater the tax savings that can be realized as the post-transfer appreciation in the value of the assets transferred will accrue in trusts that are not subject to estate tax.

A good investment of your time

By investing a little time now and crafting solutions to the two issues noted above, dealers can help ensure the continuous operation of the businesses they have spent their lifetimes building, and maximize the assets that they will leave to their families.

The attorneys of Burke, Warren, MacKay & Serritella represent more than 100 automobile dealers throughout Illinois, and in many other states. This representation includes succession and estate planning, as well as assisting franchise owners and managers with all aspects of their operations, including dealership purchase and sale, financing acquisitions, corporate restructuring, and all phases of commercial litigation. For additional information, we invite you to contact Marty Ryan 312/840-7060 / mryan@burkelaw.com, Bill Kelly 312/840-7061 / wkelly@burkelaw.com, or Ira Levin 312/840-7065 / ilevin@burkelaw.com. ☒



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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2007 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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FORMER STATE’S ATTORNEY JOINS FIRM

The firm welcomes Susan M. Horner as an associate in its Religious & Human Services and Litigation practice groups. Before joining the firm in 2007, Ms. Horner served as a prosecutor in the felony trial division of the Cook County State’s Attorneys Office, where she was employed since law school. She has tried more than 25 jury trials and litigated hundreds of motions and bench trials. In addition Ms. Horner has handled appellate matters and has argued before the Illinois Court of Appeals.



Susan M. Horner

Ms. Horner received a Bachelor of Fine Arts in Art & Religious Studies in 1993 from St. Mary’s College, *magna cum laude*, a Master of Arts in Art History in 1995 from the University of Notre Dame, and her Juris Doctor from Notre Dame Law School in 1998, *cum laude*.

“For nearly nine years, I worked everyday to give victims a voice,” says Ms. Horner. “For many victims of crime, we were their first contact with the criminal justice system. Our goal was to help them navigate the system and find justice. I am grateful to have had the opportunity to serve the people of Illinois.”

At Burke, Warren Ms. Horner will have the opportunity to pursue her interests in constitutional and first amendment law.

“I found a very good fit in Burke, Warren, MacKay & Serritella,” says Ms. Horner. “I look forward to helping religious and human services organizations accomplish their legal goals so that they can focus on the vital services they provide in our community.”

As an undergraduate, Ms. Horner was a painter and a print maker and considered a career as a museum curator. Within the next year, in addition to furthering her legal career, she looks forward to joining a board of an arts organization. Ms. Horner can be contacted at 312/840-7082 or shorner@burkelaw.com.

FIRM WELCOMES NEW TAX PARTNER

Julia Turk recently joined the firm as a partner in its tax practice. She concentrates in federal, state, and local income taxation and partnership and corporate law. Her deal experience includes transactions involving general and limited partnerships, limited liability companies, funds, corporations and tax-exempt organizations and advising clients on the federal, state and local tax matters relating to such transactions and entities. She has represented clients in all aspects of fund formation and structuring including real estate funds.

Prior to joining the firm, Ms. Turk practiced at DLA Piper where for more than eight years she worked on tax and related matters as a member of its Business Tax and Real Estate Capital Markets group.



Julia Turk

Ms. Turk brings a business focus to her work. “I begin all projects by working to understand what the client is trying to accomplish. Matching business objectives with related tax implications allows me offer the client well informed options,” says Turk. “ I am excited a be a part of Burke, Warren and I look forward to meeting and working with firm clients.”

Ms. Turk received her Bachelor of Arts in Political Science from the University of Michigan in 1990. She received her J.D. from Loyola University Chicago School of Law *cum laude* in 1997. In 1998 she was awarded an LL.M Degree in Taxation from New York University School of Law. Ms. Turk can be reached at 312/840-7033 or jturk@burkelaw.com.