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SPRING
06

LIVING WELL WITH A LIVING WILL

By R.A. (Bob) Challis, CFP, RHU, TEP, The Nakamun Group, Winnipeg

EVERYONE SHOULD CONSIDER having a Living Will, particularly if there is no family member who can work with medical staff or if there is conflict between family members.

A MOST IMPORTANT DOCUMENT

Your Living Will states — in writing — your wishes regarding your medical treatment and becomes a most important document to protect you and your loved ones. In the event you are unable to speak for yourself, your Living Will instructs your doctors, caregivers, and family members of the medical intervention you do or do not want to preserve your life. For example, do you want to be force-fed? Do you want your life prolonged with intravenous fluids? Do you want blood transfusions? If your lungs fail do you want a machine to take over their function? You may also indicate your organ donation intentions in your Living Will.

Your Living Will spares your family members the anguish of having to make difficult yet critical health care decisions on your behalf, especially during stressful emergency or near-death situations. Use the draft as a flashpoint in your discussion with responsible family members about the sensitive and often difficult issues surrounding your decisions on medical intervention.

Your Living Will allows you to maintain control over your medical treatment in near-death situations and limits stress and guilt



your family members may feel if they must make these difficult decisions for you. At the same time, this document provides necessary direction to your medical caregivers, freeing them of the struggle between their ability to save lives at any cost and their need to reduce patient suffering.

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PLANNING YOUR BUSINESS SUCCESSION

By John Davis, BA, CFP, CLU, The Nakamun Group, Edmonton

SUCCESSFULLY EXITING FROM YOUR BUSINESS requires as much, if not more, consideration than starting your business. The process of planning your business succession can take three to four years, and unless you allow enough time for the process, you might not completely appreciate all the options and therefore not achieve the full value you and your family deserve.

Business succession is emerging as a huge issue because small- to medium-sized businesses are such an important part of our economy and the owners of these businesses are now in their 50s and 60s. Sometimes circumstances allow business owners to sell their companies when they are still in their 50s — they've accumulated enough wealth that they don't need to work any longer, they develop other interests, or they are approached by prospective buyers. On the other hand, some business owners are in their late 70s before they consider selling.

The demographics of our society tell us that in the next 10 to 15 years, there will be a phenomenal number of people ready

to sell their businesses. A recent BDO Dunwoody/COMPAS report on family business revealed that 92 percent of small- to medium-sized business owners felt that having an exit strategy is important. However, only 44 percent actually had an exit strategy and even fewer — 24 percent — had chosen a successor. Of owners in their 60s and 70s, still only 57 percent had an exit strategy, while 52 percent had chosen a successor.

Owners must plan their exit well in advance of their retirement to meet their business and personal objectives. If they wait too long, there may be too many business opportunities chasing too few buyers, and prices may suffer.

ANNOUNCEMENT

FLOYD MURPHY, a founding member of the Nakamun Group, has been appointed to the Board of the Vancouver Foundation. The largest public foundation in Canada, the Vancouver Foundation currently administers more than \$600 million of assets and distributes more than \$30 million per year in support of charitable causes.



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THE OPTIONS

There are fundamentally three types of business succession:

1. FAMILY TRANSFER

An emotional favourite because business owners like to leave a family legacy. However, because of emotions and relationship dynamics within families, this option has the most challenges.

2. MANAGEMENT BUY-OUT

An advantageous option, because there is continuity of product and service quality with the existing management team.

3. OUTSIDE BUYER

Likely the cleanest transfer, however owners tend to undersell their business, particularly if the new owner is buying to leverage or complement an existing business.

Often, the solution is a hybrid — a family or outside transfer with the existing management team remaining to provide continuity and expertise. The family

patriarch might feel the next generation is not yet ready to take over the business, so existing key people continue in their roles.

STEP ONE

Preparing to sell a business requires the expertise of several professionals:

- Business valuator — a Chartered Business Valuator can help a business owner establish the value of the business. Whether the succession option is to sell the business to family members, management, or outsiders, a price needs to be established. Tax legislation prohibits an owner from simply passing down the business to the next generation without declaring the value for tax purposes
- Accountant — to help evaluate the available options
- Tax lawyer — to ensure corporate reorganizations, estate freezes, or other strategies are implemented effectively
- Nakamun Advisor — to ensure the business succession plans are compatible with the owner's personal financial plans and to assist in investing the proceeds of the sale. Our long-standing relationships with our clients and our understanding of their financial objectives often put us in a good position to serve as coordinator of the business valuation team.

STEP TWO

Planning for the successful turnover of the business involves several aspects:

- Reallocating the responsibilities of the current owner
- Ensuring adequate lifetime retirement income for the current owner
- Communicating effectively with family members, staff, suppliers, customers, financial institutions and anyone else directly affected by the change in ownership and ensuring the particular concerns of each different group are addressed

Again, professionals with the specific expertise in each area can help to make the transition smooth and successful.

STEP THREE

Once the new owners of the business have been determined, both the buyer and seller must agree on a financing plan. Likely the funds will be transferred partly as cash, partly financed by the new owners and/or partly financed by the vendor, particularly when family is buying the business.



ESTATE FREEZE

If family or the management team is buying the business from the owner, life insurance can play a valuable role in financing the business purchase and deferring taxes for the current owner. When the current owner dies, his estate pays the taxes.

In a process called “estate freeze”, the current owner converts his common shares, which grow in value but do not pay dividends, to preferred shares, which do not grow in value but do pay dividends. The company then owes the original owner a specified amount of money for the preferred shares and pays dividends, which becomes the original owner's income. The value of the preferred shares, though, is “frozen”.

If the new owners buy insurance on the life of the original owner and name the company as beneficiary, when the original owner dies, the company has the funds available to purchase the preferred shares that have not already been redeemed. This strategy enables the new owners to finance the purchase of the business and the founding owner to defer payment of taxes — the estate pays the taxes on the proceeds of the share purchase.

WORTH THE TIME AND EFFORT

Business succession planning takes time, effort, and advance thinking that is unquestionably worthwhile. Without a well-planned and effectively executed succession, a business that the founder perhaps spent a lifetime building might not return the rewards for which he and his entire family sacrificed.

If you are approaching the time when you might want to turn your business over to somebody else, your Nakamun Advisor would be pleased to help you unlock its value and plan for your future.

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CHECK PROVINCIAL LEGISLATION

Legal recognition of Living Wills varies from province to province. Provinces that recognize Living Wills require health care workers to respect an individual's written wishes. Some provinces require a Durable Power of Attorney to appoint someone to make medical-care decisions if or when an individual is incapable of making those decisions.

Legislation governing Living Wills varies significantly from province to province. Therefore, an appropriately qualified lawyer should be engaged to draft this critical document.



STEPS IN PREPARING A LIVING WILL

Most important is to prepare your Living Will while you are still physically and mentally capable of doing so. Here are the steps to follow:

- Talk with your loved ones about your medical care decisions
- Discuss your decisions with your family physician while you are still in good health
- Instruct a lawyer to prepare your Living Will clearly stating your decisions
- Provide copies of your Living Will to a responsible family member, your doctor and other caregivers, your clergy, and your lawyer

Your Nakamun Advisor can recommend appropriate professionals to assist you in preparing your Living Will. 🌱

SUGGESTED READING

From time to time, we are asked to recommend books for potential investors, particularly people in their 20s. Although the book was published a number of years ago, we highly recommend "The Millionaire Next Door — The Surprising Secrets of America's Wealthy" by Thomas J. Stanley, Ph.D. and William D. Danko, Ph.D.

Using actual examples, Drs. Stanley and Danko detail the basic steps that people have taken to acquire wealth, even with modest incomes.

Check your favourite bookstore or the Internet for this informative book.

LIVING WILLS IN EACH PROVINCE

Living Wills are governed by provincial legislation. Here are the equivalent names in each of our provinces:

| PROVINCE | TERM FOR LIVING WILL |
|----------|---|
| BC | Living Will and the more complex Representation Agreement |
| AB | Personal Directive |
| SK | Directive |
| MB | Health Care Directive |
| ON | Power of Attorney for Personal Care |
| PQ | Mandate in Anticipation of Incapacity |
| NB | Power of Attorney for Personal Care |
| NS | Living Will |
| PEI | Directive |
| NF | Advance Health Care Directive |



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