Chapter Fifteen – 0445LO
Presented by the Probate Section, Tax Section and Solo, Small Firm Management Committee

Estate Planning for the Solo and Small Firm Practitioner: How to Plan During Your Lifetime and How to Administer a Practice Upon Death

Course Summary

One of life's greatest certainties is that we will not all live forever. Death may therefore create tremendous difficulties for the heirs of solo practitioners and practitioners in small firms who do not adequately plan for the transition or sale of their practices upon their respective deaths. Practitioners from all sections of the bar will benefit from learning how to incorporate a practitioner's law practice into his or her estate plan, and how to administer an estate or a solo practitioner or practitioner in a small firm to assure that the practitioner's clients are properly and ethically transitioned.

Course Planners:
Justin H Brown, Esq.
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Maureen M. Farrell, Esq.
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Panelists:
Robert H. Louis, Esq.
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BIOGRAPHIES

Estate Planning for the Solo and Small Firm Practitioner: How to Plan during Your Lifetime and How to Administer a Practice upon Death

PANELISTS:

Robert H. Louis, Esq.

Bob Louis is a partner at Saul Ewing Arnstein & Lehr LLP in the Estate Planning and Administration Practice. He has many years of experience in assisting clients in preserving and passing on wealth and business ownership across the generations. In this work, he helps clients to develop family business succession plans, often involving benefit planning. He also assists with estate planning, including the preparation of wills, trusts and other estate planning documents, to further the process of wealth preservation and transfer, and to deal with the varying interests and needs of family members. A significant part of Bob's practice focuses on retirement plans, executive compensation, employee benefits, and tax and estate planning for those kinds of benefits. He advises clients on the methods of planning for a happy and rewarding retirement. Based on more than 40 years of experience with employee benefits and tax planning, Bob is a skilled retirement coach.

Bob enjoys explaining and demystifying these sometimes complex issues. He is the Editor of *Personal Wealth Law News*, a law blog hosted by the Firm that reviews developments in retirement, estate planning and other wealth-related issues. To read his blog, please click here. Bob also writes articles for the *Legal Intelligencer* on retirement planning issues. He is a frequent lecturer and writer on these topics to various groups.

James R. Malone, Jr., Esq.

James R. Malone, Jr. is a Principal in Post & Schell, P.C.'s Tax Controversy Practice. Mr. Malone represents clients in disputes with federal, state and local tax authorities in both administrative proceedings and in court. Mr. Malone provides compliance advice on federal, state, and local tax issues to clients across a broad array of industries.

Mr. Malone earned his LL.M. in Taxation, with Distinction, from Temple University James E. Beasley School of Law and his J.D., *cum laude*, from Villanova University School of Law.

Ku Yoo, Esq.

Ku Yoo is a Partner at Chang & Yoo LLP who focuses on business formation and incorporation, working through the growth of the business, dealing with acquisitions and sales, and finally helping with its exit strategies.

Ku represent businesses, investors, and high net-worth individuals, investment vehicles and funds in various industries including startup, biotech, software, hospitality, real estate, and others. He advises clients with issues arising from day-to-day operations of the

business to major transactions including sale, acquisition, or other changes and restructures. He also advises foreign companies doing business in the United States.

Prior to attending law school, Ku taught Latin at boarding schools and a fund-raised for a university. As a lawyer, he also taught college business law courses.

SUMMARY OF CONTENTS

Estate Planning for the Solo and Small Firm Practitioner: How to Plan During Your Lifetime and How to Administer a Practice Upon Death

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Planning For Your Demise: Some Thoughts on Death and Professional Responsibility

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Planning For Your Demise:
Some Thoughts on Death and Professional Responsibility

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"Nay, the greatest wits and poets, too, cease to live." Lucretius, *De Rerum Natura.*

- Obligations of the deceased; some things she should have thought about:
  - Core obligations of all lawyers:
    - Providing competent representation to a client under Rule 1.1.
      - The rule and its comments don't directly address death or disability;
      - For sole practitioners, there is no one who will automatically take over;
      - In some small firms, lawyers have different practice areas and would not be competent to act on the lawyer's behalf;
      - Having a plan to address death or disability is consistent with providing competent representation;
      - The problem is particularly acute for lawyers in deadline-driven practices, such as litigation.
    - Diligence, Rule 1.3- "A lawyer shall act with reasonable diligence and promptness in representing a client." Pa. R. Prof. C. 1.3
      - Death or disability precludes a lawyer from acting on a client's behalf;
      - Some consideration of how that would be addressed is thus appropriate.
    - Confidentiality, Rule 1.6.
      - Confidentiality is one of the central obligations under the rules: "A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation." Pa. R. Prof. C. 1.6, Comment [2].
      - The rules impose a specific requirement on every lawyer to secure client-confidential information: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Pa. R. Prof. C. 1.6(d).
      - A plan for appropriate disposition of client files in the event of death, disability or retirement is consistent with a lawyer's obligations under Rule 1.6(d). ABA Formal Opinion 92-369 indicates that a lawyer should have a plan to address client files and property in the event of death "[t]o fulfill the obligation to protect client files and property." Elements:
        - Designate another lawyer with authority to review files and determine matters requiring immediate attention;
        - Authorized to contact clients and advise of the lawyer's death;

- ♦ The ABA views this area as covered by competence and diligence, Model Rules 1.1 and 1.3, as well.

- Safekeeping Property, Rule 1.15. "A lawyer should hold property of others with the care required of a professional fiduciary." Pa. R. Prof. C. 1.15, Comment [1].
  - Rule 1.15 imposes detailed requirements on lawyers who handle the property of others, including requirements for segregation of the property and maintenance of records;
  - Rule 1.15 mandates lawyer supervision of the handling of all client funds and accountability for them;
  - The lawyer tasked with administering your estate would greatly appreciate it if your records were in good order.
- Termination of representation, Rule 1.16(d). Rule 1.16(d) requires a lawyer to "take steps to the extent practicable to protect a client's interests." Pa. R. Prof. C. 1.16(d). The measures suggested by the rule include:
  - providing notice;
  - allowing time to engage other counsel;
  - surrendering papers and property; and
  - refunding unearned retainers.

➢ A lawyer's planning would ideally provide for the fulfillment of all of these obligations:

- Lawyers practicing in larger firms have an infrastructure they can rely upon to take care of these matters.
- Lawyers in smaller firms should consider what they would do in the event of the sudden death or disability of one of the members of the firm.
- Solos cannot count on someone cleaning up after them.

❖ Obligations of the living; some considerations for a lawyer who is acting as the administrator or executor of a dead lawyer:

➢ The administrator or executor does not automatically assume all of the deceased lawyer's obligations, but certain of the Rules of Professional Conduct would apply or may apply-

- Rule 1.15, safeguarding property.
  - Once a lawyer acting on behalf of another lawyer's estate comes into possession of client property held by the deceased lawyer, the lawyer will have a segregation obligation of her own;
  - The lawyer would also now appear to be accountable to the deceased lawyer's clients who want to retrieve their property. *See* Pa. R. Prof. C. 1.15(e) ("a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property");

- Rule 1.15(e) does explicitly provide for addressing funds through estate procedures: "[T]he delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment." Pa. R. Prof. C. 1.15(e).

  - Confidentiality. A lawyer who is acting as an executor of another lawyer should obviously take appropriate steps to secure client files and to restrict access to them.

  - ABA Formal Opinion 92-369 suggests the following:

    - Prompt review of files to determine which need immediate attention;

    - Review should be as limited as possible because you do not represent the clients;

    - All clients should be contacted about disposition of property.

❖ Failure to Plan-

  ➢ The Rules of Disciplinary Enforcement include provisions for the appointment of a conservator of a practice.

  ➢ A conservator can be appointed by the president judge of the court of common pleas if a lawyer maintained an office in that county upon application of disciplinary counsel. Pa. R. Disc. Enf. 321(a)(1).

  ➢ A conservator can be appointed if "no partner or other responsible successor to the practice of the attorney is known to exist." Pa. R. Disc. Enf. 321(a)(3)-

    - Grounds for a conservatorship include temporary suspension;

    - Also include situations where "the attorney abandons his or her practice, disappears, dies or is transferred to inactive status because of incapacity or disability." Pa. R. Disc. Enf. 321(a)(2)(iii);

  ➢ The process is presumably slow. Meanwhile, frustrated clients may be prejudiced.

Death of a Solo: Tax Issues of Dead Lawyers

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Death of A Solo: Tax Issues of Dead Lawyers

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"[I]n this world nothing can be said to be certain, except death and taxes." Benjamin Franklin.

Problem No. 1: Sally Solo just died, and you are her executor.

Congratulations, you now have acquired new potential liabilities.

As to Sally's taxes or those of her estate:

"A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government." 31 U.S.C. § 3713(b).

Don't let Sally's problems become your problems.

- Existing tax obligations.
  - Even if Sally's records are pristine, it would be imprudent to rely upon them. If Sally had an accountant he or she can help, but may not have been told everything.
  - Accordingly, conduct docket searches in both the county (or counties) in which Sally had an office, and where she resided for tax and other obligations. The following should be done:
    - Prothonotary-Judgments, state, federal and potentially municipal tax liens;
    - U.S. District Court-Judgments;
    - Municipal court or other minor courts-Judgments;
    - U.S. Tax Court, to see if there is a pending case; and
    - Careful review of any payroll records.
- Closing out of tax accounts.
  - There will be final returns associated with the practice to be prepared, including:
    - Philadelphia BIRT return;
    - Employment tax returns, which require a statement of who will have custody of records;
    - Final unemployment compensation tax returns;

- Final return for any entity associated with the practice.

➢ Other steps.

- File IRS Form 56 (notice of fiduciary relationship).
- Estate inventory, etc.
- Final personal tax return and income tax returns for estate.
- Consider requesting a prompt assessment, I.R.C. § 6501(d), to potentially accelerate closure of income tax liability determination.

❖ What if there are indicia of fraud associated with Sally's tax accounting?

➢ Take immediate measures to assure that no one else has access to records, particularly electronic records that could be altered.

➢ Get help- Sally cannot go to jail, but you can.

➢ Approach any interaction with her accountant with great caution:

- Federal tax preparer privilege under I.R.C. § 7525 is sole protection over communications with a tax accountant;
- Does not apply to criminal investigations and prosecutions;
- It is possible that the CPA was involved in wrongdoing.

Problem No. 2: Frank Galvin has died. After a professional rough patch of several years, Frank won a large verdict in a medical malpractice case, which helped him build a thriving personal injury practice.

Frank's will authorizes you, as his executor, to sell the practice to one of three lawyers. What are the tax considerations?

Form of sale- asset v. entity sale.

❖ Asset sale.

➢ Agreement should allocate purchase price-

- The IRS can challenge an unreasonable allocation;
- Taxpayer generally cannot challenge absent fraud or mutual mistake. *Comm'r v. Danielson*, 378 F.2d 771 (3d Cir. 1967).

➢ Installment treatment, I.R.C. § 483-

- Will permit recognition of any gain over duration of obligation;
- Will not apply to unrealized receivables.

➢ Good will-taxed as capital gain.

❖ Sale of a P.C. or similar entity- conceptually simpler (also rarer).

➢ Income to Frank's estate to the extent the amount realized on sale exceeds his basis in the stock of the P.C.

- Prior tax returns should provide data on basis for S Corporation.

What if Frank's firm was a partnership?

- Is there a written agreement?
  - Many partnerships have buy/sell agreements built into them;
    - Income is recognized to the extent amount realized exceeds Frank's basis in his partnership interest;
    - Capital gain v. ordinary income-
      - normally treated as capital gain under I.R.C. § 741;
      - but unrealized receivables and inventory are ordinary income items, I.R.C. § 751-
        - while law firms don't have "inventory" in the normal sense, they are service businesses that generate receivables;
        - "unrealized receivables" are defined as "any rights (contractual or otherwise) to payment for- . . . services rendered, or to be rendered" except to the extent previously included in income. I.R.C. § 751(c).
          - applies not only to cases settled as of the date of Frank's death but to his firm's work in progress;
          - includes right to payment on a *quantum meruit* basis. *Logan v. Comm'r*, 51 T.C. 482, 485-86 (1968).
  - Other common provisions include the use of formulae for:
    - Payments treated as share of income or a guaranteed payment under I.R.C. § 736(a);
    - Payments on account of interest in the partnership under I.R.C. § 736(b)-
      - Treated as a partnership distribution;
      - Exceptions for-
        - payments on account of unrealized receivables;
        - goodwill (unless stated in the agreement).
- What if there is no agreement?
  - Historically that would terminate the partnership in the absence of a contrary provision of an agreement;
  - Current law, death triggers dissociation, 15 Pa.C.S.A. § 8461, but the firm does not dissolve;
  - This is a more complex situation due to the need to negotiate a resolution and the greater prospect for litigation.
  - Estate would succeed to Frank's rights in the partnership:

- Distribution rights, 15 Pa.C.S.A. § 8445;
- Right to inspect books and records, 15 Pa.C.S.A. § 8446;
- Right to an accounting, 15 Pa.C.S.A. § 8448.

SAMPLE - Potential provisions for a solo's will

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Potential provisions for a solo's will:

I have owned and operated my own law practice since 1985. I incorporated Soprano Law Offices, P.C. in 1998. I am the 100% shareholder of this professional corporation. My wife, Carmela Soprano, has been working as a paralegal in my office since 2007 and is familiar with my law practice.

I grant Carmela Soprano full authority to wrap up my law practice and to sell the practice to a lawyer licensed to practice in the Commonwealth of Pennsylvania, with the proceeds of sale to be part of the residue of my estate.

X. SPECIAL FIDUCIARY POWERS FOR CONTINUATION AND OPERATION OF BUSINESSES

A. Powers Over My Law Practice: I specifically authorize my executor to wind up and sell my law practice. If my executor requires a Pennsylvania attorney to assist in this process, they have the authority to retain one. My executor is authorized to pay reasonable compensation for such attorney's services. Subject to the *Rules of Professional Conduct* applicable to attorneys, I direct that my executor shall have all the authority necessary to properly wind up my law practice, including but not limited to the authority to:

1. Notify my clients of my death.
2. Review client files for the purpose of determining whether any immediate action needs to be taken to protect my clients' interests.
3. Transfer active files to the client or to the successor lawyer designated by the client, and to dispose of closed or inactive files.
4. Make arrangements to have the work on active files completed by competent counsel if no successor lawyer is designated by the client, and to secure agreements with the successor lawyers as to the handling of open files, including collecting fees for my benefit.
5. Arrange for the disposition of funds in any client trust accounts.
6. Arrange for the disposition of funds in any accounts over which I am a fiduciary such as an executor or trustee.
7. Any tax accounting for my business activities and law practice should be done by my long-time friend and accountant, Silvio Dante, CPA.

B. With respect to any interest I may have at my death in Soprano Law, P.C. or any other closely-held business, or any business which controls, or is controlled by, such business or is a successor in interest thereto (together referred to herein as the "Companies"), whether as partner, stockholder or otherwise and any business with which

such closely-held business may merge or consolidate, I hereby specifically grant to my executor the powers herein, in addition to the normal and typical fiduciary powers granted by this will and by statute to an executor or other fiduciary, and give him the exclusive authority to deal with any such business interest as freely as I could have done during my lifetime.

C. It is my express intention that no court approval or order be required to enable my executor to perform any of the acts contemplated in this section.

D. I have spent my entire adult life building my law practice. I want my clients to be well taken care of by a successor attorney.

E. I specifically direct my executor as follows:

1. To work with tax counsel to seek any reduction in valuation or discounting in my interest in the Companies for estate and inheritance tax purposes available under the accepted valuation methods and law in effect at my death.

2. To extend to my good friend and attorney, Christopher Moltisanti, Esq., the full authority to continue the operation of Soprano Law, P.C. for the purposes of wrapping up my law practice in the best interests of my clients.

3. To allow for Christopher Moltisanti, Esq., to the extent that he is willing and able, to purchase my law practice for fair market value. If Christopher Moltisanti is also acting as counsel to my executor, I waive any conflict of interest.

4. If my law practice is sold or transferred to another lawyer or law firm, I desire that my name be kept on the letterhead along with those of my predecessors, John Sacrimoni, Esq. and Carmine Lupertazzi, Esq.

5. To elect or employ as director, officer, employee or agent of any such business, any person, including my executor and to delegate authority to, compensate and remove or discharge any such person.

6. To create or cause to be created within any such business such deferred compensation or other employee benefit plan as my executor considers advisable.

7. To cause to be made and to consent to the making or the continuation of any loans to such business, and to pledge assets of such business as collateral therefore, with any bank or other financial institution.

8. The fact that my executor may be have an interest in such business in an individual capacity shall not, insofar as my estate is concerned, constitute an adverse or conflicting interest, and the acts of my executor as such shall be considered as if my executor had no interest in such business.

9. I release my executor from any liability for any depreciation in value or loss by reason of the retention of any such business interest except for depreciation or loss resulting from gross negligence or fraudulent acts of my executor in connection therewith.

You Will Retire, Either Vertically or Horizontally

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You Will Retire, Either Vertically or Horizontally

Robert H. Louis

1. Estate Planning

   a. Wills

   b. Beneficiary Designations
      (i) retirement plans
      (ii) insurance

   c. Powers of Attorney
      (i) for personal finances
      (ii) for business interests
      - can't give a non-lawyer authority over a law practice, but can over finances, etc., that aren't the practice of law

   d. Health Care Directives

2. Retirement Planning

   a. When to begin? Age 25

   b. Choices regarding retirement plans

   c. Whether or not you work beyond a "normal" retirement age might depend on whether your finances require you to do so.

   d. Determining the nature of your retirement
      (i) what activities
      (ii) what location

   e. Health issues – again, start at age 25

   f. Telling your plans to spouse and family

3. How to Prepare for your Unplanned Departure, Temporary or Permanent

   a. Assess your practice and how well it can be understood and taken over by others

   b. Plan for an emergency takeover

(i) speak with other practitioners
(ii) reciprocal agreements

c. Prepare a letter of instructions
(i) assume no one else knows anything about your practice
(ii) advice to any colleagues, paralegals, family members
(iii) tell people what it is and update it

d. Know what others can and cannot do

4. Sample Retirement Letter and Agreement to Sell Practice

5. Seven Ages of Retirement

6. A Short Course on Retirement for Lawyers

The Seven Ages of Retirement (Slides)

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Saul Ewing LLP

THE SEVEN AGES OF RETIREMENT

The ages at which decisions may be made that affect the quality of retirement

Saul Ewing LLP

Age 50

The catch-up election –

the ability to save more for retirement through our qualified retirement plan

Saul Ewing LLP

Age 59½

The age at which distributions may be taken from retirement plans without a penalty for premature withdrawal

Saul Ewing LLP

Age 62

An age at which Social Security benefits may be taken: beginning the decision process

Saul Ewing LLP

Age 65

Eligibility for Medicare begins: another decision point

Saul Ewing LLP

Age 66

Normal retirement for Social Security benefits

(for most of us)

Saul Ewing LLP

Age 70

The age for receiving enhanced Social Security benefits – small increases in later years

Saul Ewing LLP

Age 70½

IRA and retirement plan benefits must begin (except…)

Saul Ewing LLP

The takeaway:

No single answer for everyone and every situation, but important to think about options. Seek professional help.

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1. What are We Planning for?
    a. End of Practice – Sale, Succession, Close-Out
    b. Retirement
    c. Death

2. Why Do I Plan?
    a. I can't work forever…
    b. I might want or need some help retiring.
    c. My practice is quite possibly the largest asset I have. I would like to get something for it as I plan for retirement.
    d. I have clients who will need a lawyer going forward.
    e. It's not nice to have someone else deal with money issues (especially IOLTA) after I die.

3. How Do I End My Practice?
    a. Sale of Practice or Succession
        i. Cash payment
        ii. Seller financed
        iii. Life-insurance financed (partnership)
    b. Closing out

4. Who Is Involved?
    a. Partner
    b. Employee(s)
    c. Clients
    d. Tribunals
    e. Landlord (for the practice)
    f. Third Party

5. When Do I start Planning?
    a. If I had been smarter, I would have built a practice that can be sold from the beginning.
        i. Some practices seem better-suited for sale.

b. Maybe I can still find someone to continue on the practice and pay me something for it.
    i. I would need an employee or (younger) partner who could succeed.
c. I could run the practice until I start winding down.
d. Or just start preparing for the worst case scenario and continue on.

6. Where Do I Go from Here?
    a. Partnership Agreement
    b. Buy-Sell or Cross-Purchase Agreement
        i. Life Insurance Policy
        ii. Disability
    c. Accountant
    d. Wills, Instructions, and Other Documents

7. Nuts and Bolts:
    a. Sale of Practice
        i. General Ethics Rules
            1. 1.17 Sale of Practice
                a. There are specific minimum steps assigned:
                    i. Notice to client
                    ii. Client has right to representation by the purchaser under the existing fee arrangements
                    iii. Client has right to retain other counsel or to take possession of the file
                    iv. Client's consent to the transfer of representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice
            2. R5.4 Professional Independence of a Lawyer Comment 3: Estate of lawyer whose practice was sold can share fees with the purchasing lawyer
            3. R5.5 Unauthorized Practice of Law; Multijurisdictional Practice Of Law – Beware of the client list, where the cases are located, especially for litigation, etc. There may be conflicting rules.
                a. E.g. representing a party in real estate transaction while also representing the same client party as broker is permissible in some and not so in other states.
            4. R5.6 Restrictions on Right to Practice

a. Sale pursuant to R1.17 can contain non-compete (Comment 3)

5. R1.6 Confidentiality – During due diligence, some disclosure of confidentiality may happen. But "must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure." Comment 17.
6. Conflict of Interest
    a. R1.7 – Current Clients
        i. Numerous rules, but obviously, cannot acquire client on the opposite side of the v.
        ii. Some conflicts a waivable See 1.7(b)
        iii. Organization client issues. – Did I represent an organization client's employee, officer, director? Or vice versa? Or, am I on the board of the (prospective) organization client?
            1. R1.13 Organization as Client – May have represented an employee/executive/director/owner as client before. Conflict?
            2. Especially small offices tend to represent a closely held companies where the owners and the business entities get confused.
    b. R1.8
        i. Business transaction with current clients issues.
        ii. Review every contract – no property interest in a cause of action, etc.
        iii. Aggregate settlement issues, if acquiring a practice of a colleague who was in the same case, etc.
    c. R1.9 – Former Clients
        i. Again, due diligence issues.
        ii. Continuing conflict of interest issues

ii. Valuation

iii. Client Retention/Earn-Out

1. Especially with earn-outs, is it division of fees? R.1.5 Fees.
    a. Should I continue to update my law license in good standing?

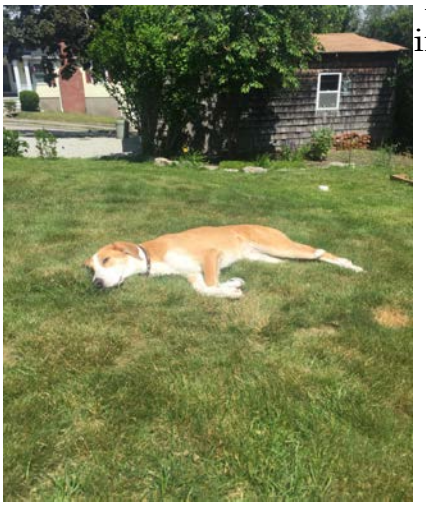
b. Again, the estate of seller of practice can share fees.

iv. Method of Payment
    1. Cash
    2. Seller Financed
        a. Installment Payment, Tax Issues
        b. Promissory Note

v. Other Issues
    1. Purchase Agreement
    2. Assumption of Liability
    3. Office Lease

b. Succession (Sale to Partner or Employee)
    i. Very likely a seller-financed sale
    ii. Client Retention/Earn-Out could still be an issue
    iii. Death of a Partner – Buy-Sell
        1. Cross Purchase
            a. Tax consequences (non-deductible)
            b. Incentives – each partner has to continue to fund every other partner's policy; if the policy lapses, adjustments have to be made
            c. Valuation issues – The practice may grow or shrink. Growth is a bigger issue in that you'd have to re-up the insurance policies, etc.
        2. Redemption
            a. Tax consequences (Deductible to the partnership/business)
            b. Incentives – potentially easier to remember as a business since it's an expense item. The business purchases policies on each and every partner (or key-person insurance in a non-legal settings)
            c. Valuation issues – Same valuation issues.
    iv. Other Considerations
        1. You may be the landlord to the firm.
        2. Trust accounts.

c. Closing Out a Practice
    i. Ethical issues
    ii. Trust account problems (I've only dealt with this in MA)



Buy-Sell Agreement

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This is the buy-sell sample for a newly started 2-partner dental office.

BUY-SELL AGREEMENT

THIS AGREEMENT is entered as of the _____ Day of _____, _____ the ("Effective Date"), by _____, residing at _____ ("First Member") and _____ residing at _____ ("Second Member"), as members (the First Member, the Second Member being hereinafter sometimes collectively referred to as the "Members").

RECITALS

WHEREAS, the parties are the members of _____, a _____ limited liability company (the "Company") pursuant to an Operating Agreement dated _____, as amended (the "Operating Agreement"); and

WHEREAS, the parties desire to restrict their ability to transfer their membership interest in the Company under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

As used herein, the following terms have the following meanings:

(A) "Act" means the _____ Act of the _____ as from time to time amended.

(B) "Agreement" means this Agreement, as the same may be amended from time to time.

(C) "Distribution Percentage" means, for each Member, the percentage set forth opposite such Member's name as listed under Operating Agreement:

(D) "Encumber" or "encumber" shall mean mortgage, pledge, hypothecate or otherwise encumber, or contract to encumber.

(E) A Member's "Interest" in the Company shall mean the Membership Interest as defined in the Operating Agreement.

(F) "Involuntary Transfer" or "involuntary transfer" shall mean any transaction, proceeding or action by or in which a Member shall be deprived or divested of any right, title or interest in or to any of his Interest (including, without limiting the generality of the foregoing, seizure under levy of attachment or execution, transfer in connection with bankruptcy or other court proceeding to a trustee in bankruptcy or receiver or other officer or agent, any transfer upon or occasioned by the dissolution, liquidation, incompetence or incapacity of a Member, or any transfer to a state or public officer, or agency pursuant to any statute pertaining to escheat or

abandoned property).

(G) "Legal Representative" or "legal representative" of a Member shall mean executor, executors, administrator, administrators, committee, guardian, distributee, under the intestacy laws or other personal representative of a deceased Member.

(H) "Person" or "person" shall mean any individual, trust, estate, partnership, association, firm, company, or corporation, or any state or public officer, agency or instrumentality.

(I) "Transfer" or "transfer" shall mean sell, assign, convey, donate, bequeath, transfer or otherwise dispose of (other than by an Involuntary Transfer) or contract to transfer.

ARTICLE II

Section 2.1. DEATH OF A MEMBER. Upon the death of any Member, the estate of the deceased Member shall sell to the Surviving Members all of such deceased Member's Interest in the Company now owned or hereafter acquired by such deceased Member, and the Surviving Members shall purchase all of such deceased Member's Interest as provided for in this Section:

(a) The purchase price (the "Deceased Member Purchase Price") on a per share basis of such Interest shall be an amount equal to (i) the value stated in the Certificate of Agreed Value (as defined in Section 2.5 hereof) or (ii) if no Certificate of Agreed Value exists, the greater of (x) the net book value (excluding any goodwill) of such Interest computed on the accrual basis of accounting as determined by the accountant or accounting firm regularly engaged by the Company as of the last day of the month immediately preceding the month in which the deceased Member dies and (y) the fair market value of such Interest computed as set forth in Section 2.1(b) hereof. The accountant or accounting firm shall give notice of the determination of such net book value to the Company, the surviving Member and the estate of the deceased Member within thirty (30) days after the date of a Member's death.

(b) The fair market value of a deceased Member's Interest shall be the Distribution Percentage of such Member multiplied by the fair market value of the Company, which shall be determined as follows: within fifteen (15) days after receiving notice of the death of a Member, each of the Company and the legal representative of the deceased Member shall select an accountant, business appraiser or investment banker (each an "Initial Appraiser") to determine the fair market value of the Company. The two Initial Appraisers shall determine the fair market value of the Company as of the last day of the month immediately preceding the month in which the deceased Member dies and shall make such determination within thirty (30) days after the expiration of such fifteen (15)-day period (such thirty (30)-day period is hereinafter referred to as the "Initial Appraisal Period"). If the two Appraisers cannot agree on the fair market value of the Company within the Initial Appraisal Period, then the two Initial Appraisers shall select an accountant, business appraiser or investment banker (the "Third Appraiser") within fifteen (15) days after the expiration of the Initial Appraisal Period. A majority of the Initial Appraisers and the Third Appraiser shall determine the fair market value of the Company within thirty (30) days following the appointment of the Third Appraiser and shall notify the Company, the surviving Member and the estate of the deceased Member of the fair market value of the Company. The determination of fair market value made in accordance with this Section 2.1(b) shall be conclusive and binding upon all parties in

the absence of manifest arithmetical error.

(c) Payment for such deceased Member's Interest shall be made immediately after the Life Insurance purchased under Section 2.1(e). If in the event that there is no life insurance available under Section 2.1(e), payment for such deceased Member's Interest shall be made over a period, at such times and in such amounts as the surviving Member shall determine, together with interest at the "prime rate" published in The Wall Street Journal (national edition) on the date of determination of the Deceased Member Purchase Price ("Prime Rate") per annum on the unpaid balance, the said obligation to be evidenced by a promissory note or notes delivered to the estate of the deceased Member by the Company which note or notes shall permit prepayment in whole or in part at any time without penalty; provided, however, that if the Deceased Member Purchase Price is equal to or less than Ten Thousand ($10,000) Dollars, then the total Deceased Member Purchase Price shall be paid in cash within one (1) year of the date of death of such deceased Member.

(d) Upon the payment to the estate of the deceased Member of the Deceased Member Purchase Price, the legal representative of the deceased Member shall assign and deliver to the Company certificates representing all of the shares of the deceased Member's Interest with stock powers executed in blank attached and with all necessary stock transfer stamps affixed, against delivery of the Deceased Member Purchase Price, provided that such Interest shall be free and clear of all liens, claims and encumbrances.

(e) Each Member shall take out insurance on the other's life, naming himself as beneficiary, in the amount equal to the value stated in the Certificate of Agreed Value or in such proportion thereof as deemed appropriate by unanimous consent of the Members. All such policies ("Policies") shall be listed in Exhibit A, attached hereto, and shall be subject to the terms of this Agreement. Each Member shall pay all premiums due on the Policies taken out by him and shall give proof of payment to the other Shareholder within 7 days after the due date of each premium. Each Member shall be the sole owner of Policies taken out by him, and may exercise all rights under such Policies. Before exercising any right, however, such Member shall give thirty (30) days' written notice to the other Member.

(f) If any Surviving Member has failed to comply with Section 2.1(e) and failed to fund the life insurance on the Deceased Member ("Noncomplying Member"), the remaining Surviving Members who are in compliance with Section 2.1(e) ("Complying Member") shall purchase the Deceased Member's Interest in such a way that, immediately after such purchase, the relative Interest in the Company held by each Complying Member excluding Noncomplying Member shall not be changed. If all Surviving Members are Complying Members, the purchase contemplated in this Section 2.1 shall be in such a way that, immediately after such purchase, the relative Interest in the Company held by each Surviving Member shall not be changed. If no Surviving Member is a Complying Member, the estate of deceased Member shall, within fifteen (15) days after the estate ascertained or was notified by the Company that there is no Complying Member, select an accountant, business appraiser or investment banker ("Initial Appraiser") to determine the fair market value of the Company. The Initial Appraiser shall determine the fair market value of the Company as of the last day of the month immediately preceding the month in which the deceased Member dies and shall make such determination within thirty (30) days after the expiration of such fifteen (15)-day period (such thirty (30)-day period is hereinafter referred to as the "Initial Appraisal Period"). Notwithstanding the foregoing, the purchase price of the deceased Member Interest under this Paragraph 2.1(f)

shall be the Distribution Percentage of such Member multiplied by the fair market value of the Company as determined by the Initial Appraiser or the Certificate of Agreed Value, whichever is greater. The cost of appraisal born by the estate of the deceased Member shall be reimbursed by the Surviving Members.

Section 2.2. VOLUNTARY SALE. If at any time a Member (hereinafter referred to in this Section as the "Selling Member") shall propose a bona fide transfer of all, but not less than all, of the Interest then held or owned by him to any person:

(a) Subject to the restrictions and limitations on transfer of Interest agreed upon under the Operating Agreement, the Selling Member shall give written notice to the other Members and the Company of his intention to make such transfer stating the name and address of the proposed transferee, the price to be paid therefor and the terms of payment. In such event, the Company and/or the remaining Members shall have the option, exercisable upon written notice to the Selling Member and the other Members within sixty (60) days after receipt of the Selling Member's notice, to purchase all or any part of the Selling Member's Interest at the price and upon the terms bona fide offered by the proposed transferee. In determining whether or not the Company shall exercise its option, the Selling member shall vote all the Interest then owned or held by him, and the Selling Member shall vote as directed by a vote of the remaining Members.

(b) If notice shall have been duly given by the Selling Member pursuant to this Section, and if the remaining Members and/or the Company shall fail to purchase all of the Selling Member's Interest by exercise of their options within the sixty (60)-day period provided hereunder, then the Selling Member may make the proposed transfer of all of the Selling Member's Interest to the proposed transferee within the forty-five (45)-day period following the expiration of such sixty (60)-day period, but if such transfer is not consummated, the terms and conditions of this Agreement shall continue to apply to such Selling Member's Interest.

(c) Should the Company elect to purchase any portion of the Selling Member's Interest under the Section 2.2(a), unless otherwise agreed, Company shall purchase Selling Member's Interest by paying the Selling Member 25% of the purchase price in immediately available funds and 75% of the purchase price by delivery of a promissory note issued in favor of the Withdrawing Member. Unless otherwise agreed, the interest rate on the promissory note shall be the rate equal to Prime Rate on the date such purchase of the Withdrawing Member's Interest is consummated, there shall be no prepayment penalty, and the principal amount of such promissory note shall be payable in 36 equal monthly installments, commencing 30 days from the date of the consummation of the purchase; provided, however, that if the price of Selling Member's Interest Company elects to purchase is equal to or less than TEN THOUSAND DOLLARS ($10,000) then the total Withdrawing Member Purchase Price shall be paid in cash by the Company within one (1) year of the effective date of the Withdrawing Member's withdrawal or removal from the Company.

Section 2.3. VOLUNTARY WITHDRAWAL, DISABILITY, OR REMOVAL FROM THE COMPANY.

(a) If any Member proposes to withdraw voluntarily from membership in the Company, is

determined to be permanently disabled as described below, or (subject to Section 2.3(g) hereof) is removed from membership in the Company for any reason whatsoever (except by reason of such Member's death), and such withdrawal or removal is approved by the Members as provided in this Agreement, such Member (the "Withdrawing Member") shall, within thirty (30) days of such termination, offer to sell to the Company all of such Withdrawing Member's Interest and the Company shall have the option to purchase all of such Interest as provided for in this Section. Upon the death of any Member, the terms and conditions of Section 2.1 hereof shall apply.

For purposes of subsection (a) above, a Member shall be deemed to be "permanently disabled" when, as a result of his or her incapacity due to physical or mental disability or illness (i) Member shall have satisfied all of the conditions for the receipt of permanent disability benefits under the terms of any disability income policy maintained by the Company (or by other Members as the case may be) for Member's benefit or maintained by the Member, the premiums for which are paid by the Company, or (ii) if no such disability income policy shall be in existence, Member shall, for a period of six months, have been incapable of performing Member's customary duties on behalf of the Company on a substantially full-time basis and either (1) two physicians licensed to practice in the state in which Member is then a resident shall certify in writing to the Company that such Member is unable to perform such Member's normal duties for the Company on a substantially full-time basis or (2) Member shall refuse to submit to a physical examination requested in writing by the Company and/or holders of not less than a majority of Interest held by Members other than such disabled Member for determining whether the certificate described in clause (1) of this subsection shall be issued. All such disability insurance or income policies shall be listed under Exhibit B.

(b) The Company shall have the option, exercisable upon written notice sent within thirty (30) days after receipt of the Withdrawing Member's offer provided in Section 2.3(a) hereof, to purchase all but not less than all of the Withdrawing Member's Interest, upon the terms and conditions set forth in this Section. In determining whether or not the Company shall exercise its option, the Withdrawing Member shall vote all the Interest then owned or held by him, and the Withdrawing Member shall vote as directed by a vote of the remaining Members.

(c) The purchase price for the Interest of such Withdrawing Member (the "Withdrawing Member Purchase Price") shall be an amount equal to (i) the value stated in the Certificate of Agreed Value (as defined in Section 2.5 hereof) or (ii) if no Certificate of Agreed Value exists, the net book value (excluding any goodwill) of such Interest computed on the accrual basis of accounting as determined by the accountant or accounting firm regularly engaged by the Company as of the last day of the fiscal year of the Company immediately preceding the effective date of the Withdrawing Member's withdrawal or removal from the Company. The accountant or accounting firm shall give notice of the determination of such net book value to the Company, the Withdrawing Member and the remaining Member within thirty (30) days after the effective date of the Withdrawing Member's withdrawal or removal from the Company.

(d) Should the Company elect to purchase the Withdrawing Member's Interest, the conveyance shall be made to the Company within thirty (30) days after acceptance of such offer and the Withdrawing Member Purchase Price shall, at the option of the Company, be paid as provided in Section 2.3(e). Upon payment of the Withdrawing Member Purchase Price, the Withdrawing Member shall deliver certificates representing the Interest purchased with stock

powers executed in blank attached and with all necessary stock transfer stamps affixed, provided that such Interest shall be free and clear of all liens, claims and encumbrances.

(e) Unless otherwise agreed, Company shall purchase Withdrawing Member's Interest by paying the Withdrawing Member 25% of the purchase price in immediately available funds and 75% of the purchase price by delivery of a promissory note issued in favor of the Withdrawing Member. Unless otherwise agreed, the interest rate on the promissory note shall be the rate equal to Prime Rate on the date such purchase of the Withdrawing Member's Interest is consummated, there shall be no prepayment penalty, and the principal amount of such promissory note shall be payable in 36 equal monthly installments, commencing 30 days from the date of the consummation of the purchase; provided, however, that if the Withdrawing Member Purchase Price is equal to or less than TEN THOUSAND DOLLARS ($10,000) then the total Withdrawing Member Purchase Price shall be paid in cash by the Company within one (1) year of the effective date of the Withdrawing Member's withdrawal or removal from the Company.

(f) If notice shall have been duly given by the Withdrawing Member pursuant to this Section, and if the Company shall fail to purchase all of the Withdrawing Member's Interest by exercise of its option, then the Withdrawing Member shall be free to sell any portion of Withdrawing Member's Interest to any other Member at the Withdrawing Member Purchase Price without restrictions and limitations under this Agreement or Operating Agreement and the Withdrawing Member shall retain the Interest or portion thereof, if any, remaining in his ownership, subject to the other terms of this Agreement in the same manner as if such Withdrawing Member had not withdrawn or been removed from the Company.

(g) Notwithstanding any other provision in this Agreement, if a Withdrawing Member is removed from membership in the Company "for cause," as determined by a majority in interest of the Members (other than the Withdrawing Member) in their sole and absolute discretion, the Withdrawing Member shall sell to the Company, and the Company shall purchase from the Withdrawing Member, the Membership Interest of such Withdrawing Member for an aggregate purchase price of Ten Thousand Dollars ($10,000.00) within thirty (30) days of the effective date of removal of such Withdrawing Member.

Section 2.4. INVOLUNTARY TRANSFERS. If there shall be an involuntary transfer of any Interest of any Member, other than one occasioned by the death of such Member, to any person:

(a) The transferee shall take and hold said Interest subject to this Agreement and to all the obligations and restrictions upon the Member from whom said Interest was acquired, and shall observe and comply with this Agreement and with such obligations and restrictions.

(b) The Member from whom said Interest was transferred (the "Transferring Member"), or the transferee shall forthwith give notice to the remaining Member and the Company stating when the involuntary transfer occurred, the reason therefor, the number of shares transferred (the "Transferred Interest"), and the home address and capacity of the transferee. The Company shall have the option, exercisable upon written notice within thirty (30) days after receipt of the transferee's offer to purchase all but not less than all of the Transferred Interest, upon the terms and conditions set forth in this Section.

(c) The purchase price of the Interest to be paid on any purchase pursuant to this Section 2.4 (the "Involuntary Transfer Purchase Price") shall be an amount equal to the net book value (excluding any goodwill) of such Interest computed on the accrual basis of accounting as determined by the accountant or accounting firm regularly engaged by the Company as of the last day of the month immediately preceding the month in which the involuntary transfer occurs. The accountant or accounting firm shall give notice of the determination of such net book value to the Company, the Transferring Member, the transferee and the remaining Member within thirty (30) days after the Company's receipt of the notice of involuntary transfer provided in Section 2.4(b) hereof.

(d) Within seven (7) days after the receipt of the notice of determination of the Involuntary Transfer Purchase Price, the transferee shall offer to sell the Transferred Interest to the Company at the Involuntary Transfer Purchase Price. The offer shall be made by notice sent to the remaining Member and the Company by certified mail, return receipt requested. The Company may accept the offer by certified mail, return receipt requested, within thirty (30) days after receipt of such notice. In determining whether or not the Company shall exercise its option, the Transferring Member and transferee shall vote all the Interest then owned or held by them, and the Transferring Member and transferee shall vote as directed by a vote of the remaining Member.

(e) Should the Company elect to purchase any of the Transferred Interest, the conveyance shall be made to the Company within thirty (30) days after acceptance of such offer and the Involuntary Transfer Purchase Price shall, at the option of the Company, be paid as provided in Section 2.4(f), at which time the transferee shall deliver certificates representing the Transferred Interest purchased with stock powers executed in blank attached and with all necessary stock transfer stamps affixed, against delivery of the Involuntary Transfer Purchase Price, provided that such Interest shall be free and clear of all liens, claims and encumbrances.

(f) Payment for the Transferred Interest purchased pursuant to this Section 2.4 shall be made over a period, at such times and in such amounts as the remaining Member shall determine, together with interest on the unpaid balance at the rate per annum equal to the Prime Rate on the date such purchase of the Transferred Interest is consummated, the said obligation to be evidenced by promissory notes delivered to the transferee by the Company, which notes shall permit prepayment in whole or part at any time without penalty; provided, however, that if the Involuntary Transfer Purchase Price is equal to or less than TEN THOUSAND DOLLARS ($10,000) then the total Involuntary Transfer Purchase Price shall be paid in cash by the Company within one (1) year of the date of notice from the Transferring Member or the Transferee.

(g) If notice shall have been duly given by the Transferring Member or the transferee pursuant to this Section, and if the Company shall fail to purchase all of the Transferred Interest by exercise of its option, then the transferee shall be free to deal with the Transferred Interest not so purchased, free of any restrictions or rights under this Article VIII, and the Transferring Member shall retain the Interest, if any, remaining in his or her ownership, subject to the other terms of this Agreement in the same manner as if no involuntary transfer had been made.

Section 2.5. CERTIFICATE OF AGREED VALUE. Notwithstanding any other provision in this Agreement, the Members may at any time fix an agreed value (the "Agreed Value") of an Interest by a Certificate of Agreed Value signed by all the Members in the form of Schedule 2.5 attached hereto. If at any time when it becomes necessary to determine the value of an Interest and a Certificate of Agreed Value is in existence and such Certificate of Agreed Value is dated within ninety (90) days of the date as of when the value is to be determined, then the Agreed Value set forth in such Certificate shall be conclusive as to the value and shall be accepted as the value as of the date on which the value shall be required or made for the purposes of this Agreement. In no event shall a Certificate of Agreed Value be effective unless signed by all the Members. The Members may at any time execute a new Certificate of Agreed Value which shall automatically replace all prior Certificates of Agreed Value, and in no event shall any but the last Certificate of Agreed Value be effective, if at all, for the purposes herein specified.

ARTICLE III

Section 3.1. NOTICES. Any notice, request, approval, consent, demand or other communication require or permitted hereunder shall be given in writing by (1) personal delivery, (2) expedited delivery service with proof of delivery, (3) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (4) prepaid telegram, facsimile or telex (provided that such telegram, facsimile or telex is confirmed by expedited delivery service or by mail in the manner previously described), and shall be delivered to each party at his respective address set forth at the beginning of this Agreement, or to such different address as such addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the care of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of the telegram, facsimile or telex, upon receipt.

Section 3.2. AMENDMENTS. This Agreement may be amended by a written agreement or amendment executed by all the Members, but not otherwise. No variations, modifications, amendments or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

Section 3.3. MISCELLANEOUS. This Agreement supersedes any prior agreement or understandings between the parties with respect to the Company. This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Massachusetts. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of their respective heirs, legal representatives, successors and assigns. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder provision or any other persons of circumstances, shall not be affected thereby. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

Specifically, this Agreement amends and wholly replaces the Article IV Section 3 of the Operating Agreement. (We should probably do a resolution as to this as well).

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

_____

_____

SCHEDULE 2.5. CERTIFICATE OF AGREED VALUE

Pursuant to Section 2.5 of the Buy Sell Agreement of _____ (the "Company"), dated as of _____ _____, _____, by and among each of the undersigned, the undersigned, being all of the Members of the Company, hereby fix the Agreed Value of the Company at _____ dollars ($_____) for 100% of all of its Member Interest as defined by Company's Operating Agreement.

This Certificate may be executed in counterparts, each of which so executed shall be deemed an original, but all of which, taken together, shall constitute one and the same Certificate, binding upon the parties hereto, and their successors, heirs and assigns.

_____

_____

EXHIBIT A: Life Insurance Policies

EXHIBIT B: Disability Policies