

# Fine Print

A Quarterly Publication of the Ohio State Bar Association  
and Our Members

Issue 3 • Spring, 2000

## MAKE YOUR SUCCESSION PLAN A PLAN TO SUCCEED

By Paul Klug

**W**hen siblings Mike and Amy started a cleaning service business 30 years ago, they started out small – cleaning a local office or two. Through careful planning, they added employees and commercial clients. Fifteen years ago, his two sons and her three daughters joined the business, all learning it from the ground up.

One of the founders died unexpectedly; the business floundered. Did Mike's widow – who had no interest in business – inherit his share? Who was in charge? Where did their children fit in?

Every entrepreneur who starts a business writes a plan to succeed. They often overlook the need for a well-thought out succession plan. Who will carry on their dream when they cannot?

Two compelling forces pull on business founders. Their business creation – their baby – can pull them one way. Their children's desires and abilities as successors pull them another. These forces ignite strong emotions.

A succession plan considers the future. It sets a plan for how to carry on the business with minimal acrimony and transfer value to a second generation at the least possible tax cost. The plan recognizes that poor choices could lead to financially devastating lawsuits.

To begin, all owners forge an agreement on business objectives. They should address the "what-ifs" such as

incompatibility, disability, retirement, or death. Then they put those objectives in writing in a "buy-sell" agreement: an agreement either between a business and an owner, or the owners – or both.

Consider two types of "buy-sell" agreements:

■ A redemption agreement. The business agrees to buy the owner's interest upon a "triggering event" such as that owner's death.

■ A cross-purchase agreement. The owners agree to buy the share of another owner upon a triggering event. The agreement usually addresses conditions which trigger a buy-out, as well as the price and payment terms.

Next, all the owners should review the feasibility of funding the agreement with life insurance if death is the "triggering event" – to pay off the deceased or retiring owner's shares. Make sure all the owners' personal objectives match the business objectives and that wills and trusts, if any, are coordinated accordingly.

Advice to owners: Don't tackle it yourself. This is an emotionally and legally complex area of law – seek counsel from a qualified estate or business planning attorney. If a business is to survive into a second and third generation of leadership, it needs a succession plan to succeed.

*Paul Klug is an attorney with the Cleveland firm Ziegler, Metzger & Miller, LLP.*

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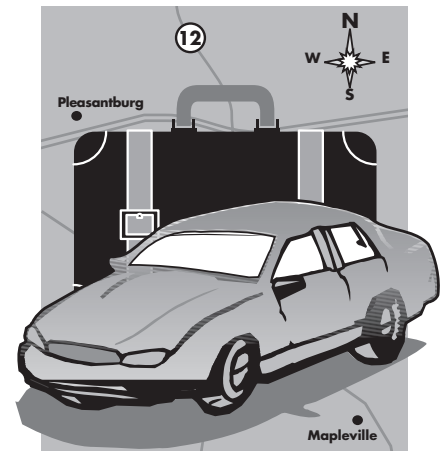
## WAGE-AND-HOUR UPDATE:

*When must an employee be paid for travel time?*

By Greg Lodge

**S**uppose one of your employees travels from job site to job site in a company truck, then takes the truck home in the evening. How much of his drive time is compensable? When if ever should an employee be paid for the commute between work and home?

Suppose another employee leaves home in the morning in her personal automobile and returns late in the evening after a one-day job in another state. Is all of her travel time compensable? What if the assignment lasts for more than one day?



The Fair Labor Standards Act, the federal law governing minimum wage and overtime requirements for all "non-exempt" employees, addresses travel time. Those regulations say:

An employee's usual commute

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from home to work, even in the employer's vehicle, is usually not compensable.

Travel that falls "all in a day's work," such as travel from job site to job site during the workday, can be compensated.

Travel from home to work in an emergency may be compensable, particularly if the employee reports to a site that is not his or her regular workplace.

If an employee travels out of town, travel time is compensable if:

■ The employee completes the trip in one day, regardless of whether the travel occurs in a company vehicle, personal automobile, or public transportation.

■ The trip lasts more than a day, but occurs during the employee's regular work hours, even if travel occurs on a Saturday or Sunday.

Travel to another city in a personal automobile or public conveyance that takes place outside of the employee's regular work hours is generally not compensable, however, for trips longer than a day.

Your attorney or accountant can answer questions about how these general rules apply to you. A mistake in this area can cost you. Employees who have not been properly paid can recover all of the unpaid wages owed to them for up to three years plus attorneys' fees.

*Greg Lodge is a labor and employment law attorney with Shumaker, Loop & Kendrick, LLP in Toledo, and a member of the OSBA Labor and Employment Law Committee.*

## **BUILDING AN ATTORNEY-CLIENT RELATIONSHIP**

by Janet Green Marbley

Here are some frequently asked questions about building a good attorney-client relationship.

**Q:** How can I check an attorney's qualifications?

**A:** Before hiring an attorney, know that person's training, experience and qualifications in dealing with cases similar to yours. Get references from other clients and lawyers. Check to make sure the attorney is licensed to practice law in the state of Ohio by contacting the Supreme Court of Ohio's Attorney Registration Office. This office can also tell you whether or not the attorney has ever been disciplined.

**Q:** What type of written agreements are necessary?

**A:** When you hire an attorney or law firm to represent you, sign a "retainer agreement" or a "fee agreement." At a minimum, spell out the services the attorney will provide, and the fees. The agreement should also say how other expenses will be covered, such as filing fees, copying, phone calls, etc. Ask for an estimate of the total charges you will pay, and ask for monthly billing statements and receipts.

**Q:** What are the attorney's responsibilities in an attorney-client relationship?

**A:** Attorneys must use their best efforts

on behalf of their clients, but they cannot guarantee results. Attorneys must also observe the ethical standards of conduct spelled out in Ohio's Code of Professional Responsibility. The attorney should update you on the status of your legal problem, and should share with you copies of all correspondence and documents prepared on your behalf. An attorney may not settle your case without your approval.

**Q:** What are the client's responsibilities in an attorney-client relationship?

**A:** In order for the attorney-client relationship to work effectively, you must "tell the truth, the whole truth and nothing but the truth," as the saying goes. Give the attorney both the favorable and unfavorable facts involved in the legal matter, and provide copies of relevant information and documents. Inform your attorney of any changes in your situation.

**Q:** How is the attorney-client relationship ended?

**A:** In most cases, the attorney-client relationship ends when the legal matter concludes. However, either you or the attorney may end the attorney-client relationship at any time in accordance with the retainer agreement and, for the attorney, within the Code of Professional Responsibility. The attorney is entitled to payment for the work completed prior to termination; you are entitled to a refund of any unearned fees paid in advance.

*Janet Green Marbley is administrator of the Clients' Security Fund of Ohio.*

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## **IN THE HOPPER**

*From the OSBA Office of Government Relations*

**T**he following bills will affect Ohio's small businesses:

Amended House Bill 488, passed by the House, would enact the Uniform Electronic Transaction Act regulating electronic records and signatures, consumer electronic transactions and security issues, and state agencies' use of electronic records and signatures.

House Bill 612, described as the "taxpayers' services bill," would authorize electronic filing of certain documents with the Tax Commissioner and Treasurer of State and change administration of Ohio's tax laws. The "user friendly" bill simplifies some procedural matters for taxpayers, extends certain filing periods, and gives the Tax Commissioner discretion regarding certain fines and penalties.

House Bill 597 would amend Ohio's nonprofit corporation law, creating two new types of nonprofit corporate entities; change references from trustees to directors; and modify membership rights notice and voting privileges.

For further information on this legislation or other legislation affecting small businesses, contact your trade association, or the General Assembly Website at [www.state.oh.us/ohio](http://www.state.oh.us/ohio).