

SUCCESSION PLANNING



ENTZ BURTON
— & ASSOCIATES —

www.SAVESTAXES.com

For Oklahoma Jurisdictions as January 2024

Goals

**What do you want the end
to look like?**

Concerns

- **Bringing up the subject with parent generation.**
 - Explore past experience & family history, discuss any current shortfalls that would benefit from continuity, and for parent generation - what is your vision of the future?
- **Can you get Interested Party buy in (anyone other than you and parent generation)? Do you need it?**

Concerns Continued

- Slow buy in or total payment?
- What is the “triggering event”? For example, death, retirement, specific date in the future, etc.



Concerns Continued

- What vehicle will you use to transfer ownership?
- How will you fund the plan?
- What are the threats?

You Need a Plan!

- **Plan should reflect your family's goals and concerns.**
- **Development of plan requires constant inclusion of Interested Parties unless parent dictates terms.**

ESTATE PLANNING

- Intangible Cost
- Tax Cost
- Transfer Cost
- Asset Protection

Estate Planning – Transfer Cost

THREE WAYS TO TRANSFER TITLE:

1) By Operation of Law

- Joint Tenants with Rights of Survivorship
- Pay-on-death beneficiaries (*i.e.*, life insurance, annuities, certain pension plans)

2) Trust

- a/k/a Living Trust or Revocable Trust

3) Probate Court

- The catch-all - if no other estate planning is done, your property will go through probate.



TYPES OF TAX COSTS

- 1) ESTATE TAX – tax on your property you give away after your death.
- 2) GIFT TAX – tax on your property you give away before you die.
- 3) INCOME TAX – tax on earned and passive income.
- 4) CAPITAL GAINS TAX – tax on the “gain” or profit you make on the sale of capital assets.
 - Amount received minus basis (approx. amount it costs you) = capital gain.
- 5) GENERATION SKIPPING TAX - tax in addition to all other taxes on property you give to persons 2 or more generations below you (*i.e.*, your grandchildren).
 - \$13.61 million of assets covered by credit (credit will pay tax on gifts up to \$13.61 million).

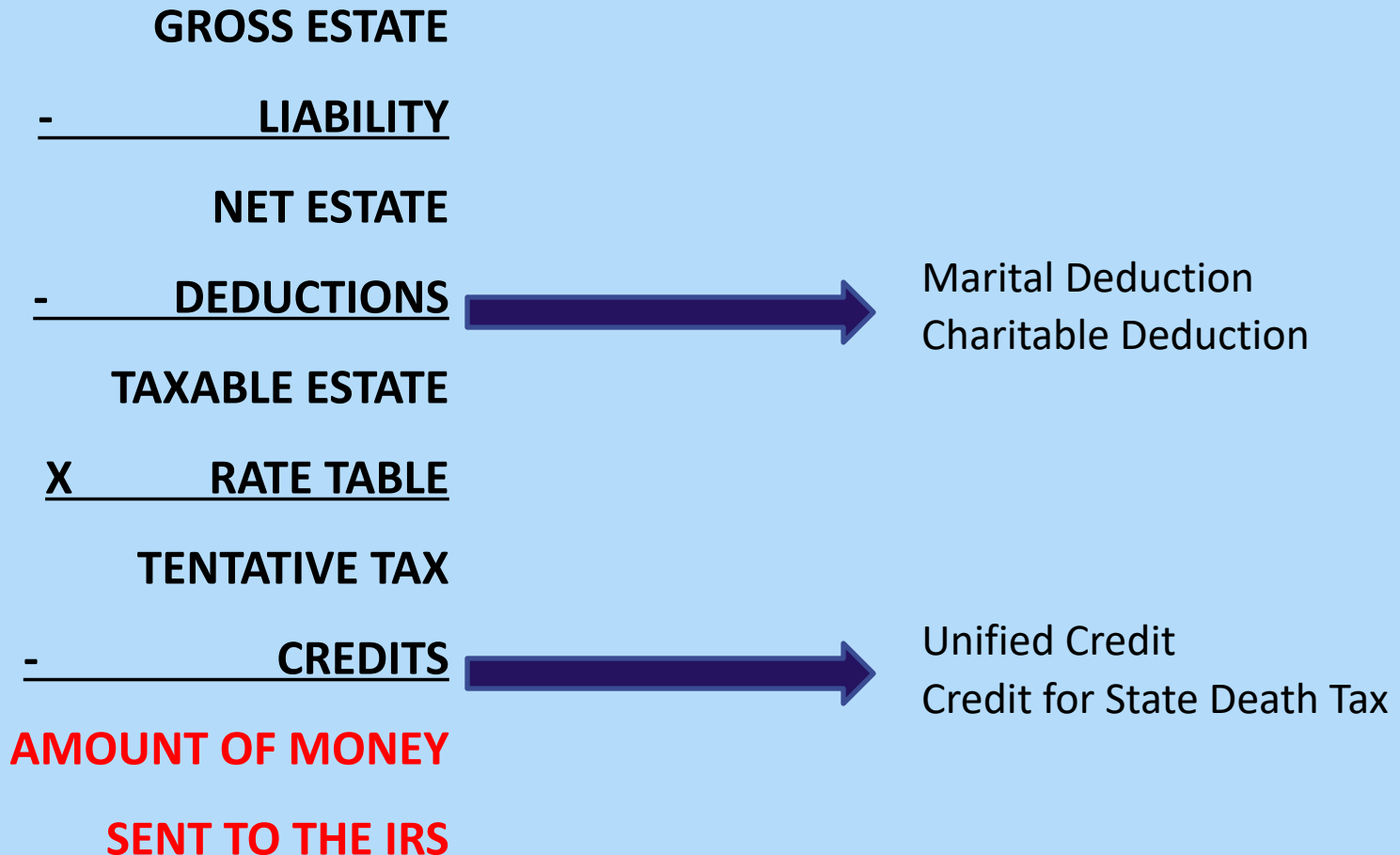
- **Estate Tax** – the tax you pay on the property you give away after you die.
- **Federal Estate Tax**
- **Oklahoma Estate Tax** – NONE (pick-up tax).

GIFT TAXES

- Tax on gifts made prior to your death.
 - There are only 3 ways in which you can give something away and it not be subject to the gift tax:
 - 1) Gift of tuition paid directly to a school.
 - 2) Medical expenses paid directly to a hospital.
 - 3) Gift of present interest (recipient can spend it now). It must be valued at no more than \$18,000 per person per year (2024). This is called your “Gift Tax Exclusion.” It is adjusted periodically for inflation.
 - When calculating the Gift Tax due, you use the same tax rate as used to calculate Estate Tax. Don’t forget you can use your Unified Credit to pay Gift Tax or Estate Tax.
 - Oklahoma does not have a State Gift Tax.
- (NOW BACK TO ESTATE TAX) -----



SIMPLIFIED TAXING FORMULA



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**We will call the amount of property the
Unified Credit pays the tax on the**

“Exemption Amount.”

TAX UPDATE – ESTATE TAX

Year of Death	Oklahoma New Law	Federal Unified Credit Covers first	Highest Estate Tax Rate
2009	\$3 Million	\$3.5 Million	45%
2010	Pick-up Tax	No Tax	No Tax
2011	Pick-up Tax	\$5 Million	35%
2013	Pick-up Tax	\$5.12 Million	40%
2015		\$5.43 Million	
2019		\$11.4 Million	
2021		\$11.7 Million	
2024		\$13.61 Million	
2026		\$ 5 Million + inflation	



COMMONLY USED PLANNING TOOLS

- **Revocable Trust (a/k/a Living Trust, a/k/a Inter Vivos Trust)**
- **Irrevocable Trust**
- **Testamentary Trust**
- **Charitable Remainder Trust**
- **Irrevocable Insurance Trust (ILIT)**
- **Revocable Trust with “B” Trust Clause (a/k/a A/B Trust, Bypass Trust, Credit Shelter Trust)**
- **Family Limited Liability Company**
- **Family Limited Partnership – CA charging order**

Estate Planning

SETTLOR	Person who sets up the trust. Also known as the Trust-maker or the Grantor.
TRUSTEE	Person who manages the trust property.
BENEFICIARY	Person who gets the use and enjoyment of the trust property.
FIDUCIARY DUTY	Highest standard of care possible under the law.

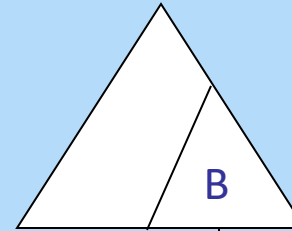
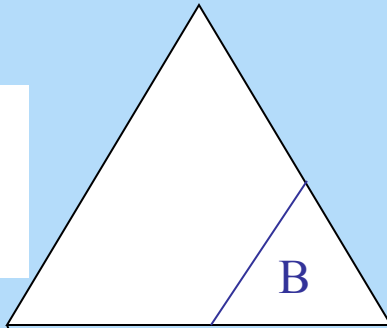


Revocable Trust with "B" Trust Clause

HUSBAND'S

WIFE'S

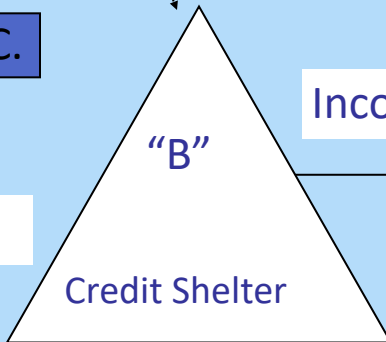
Revocable
Until His
Death



At First Spouse's
Death

U.C.

Irrevocable



Income

Surviving
Spouse

Principal If
Necessary

At Second Death

Children

U.C.

PORTABILITY

Portability allows the estate of a decedent who is survived by a spouse to make a portability election to permit the surviving spouse to apply the decedent's unused exclusion to the surviving spouse's own transfers during life and at death.

Business Transition: Choice of Entity (what legal structure the business will use)

- **General Partnership** – only if you love danger; very high liability exposure; low maintenance; good tax features.
- **Limited Partnership** – only if don't fear danger; General Partner has very high liability exposure; low maintenance; good tax features; does allow you to pick the leader and make him or her immune from removal by other family members.
- **Tax Issues** – income/losses flow through to partners based on sharing percentages; limited partners not normally subject to self-employment tax.

Business Transition: Choice of Entity Corporations

C-Corporations – Standard Entity Used by Big Business:

Acceptable if you really want to be “old school.” Income/losses dealt with at corporation level. Other than compensation, only distributions are taxed to shareholders. C-corps are disadvantageous on a sale of the corporate business as most buyers want to buy assets, not stock. An asset sale causes double taxation to the shareholders if they want the cash from the sale (*i.e.*, first taxed on corporate gain level and then taxed as income when received from the corporation at individual level).

- BUT EXCELLENT LIABILITY PROTECTION AND ACCEPTED THE WORLD OVER. Law is well settled.**

Business Transition: Choice of Entity Corporations

S-Corporation:

Shareholders elect taxation so that all income/deductions flow to shareholders based upon stock ownership. Can only be one class of stock. Shareholder can restrict stock transfers. If S-corp distributes assets to the shareholders, it will recognize income at the S-corp level that flows through to the shareholders. Good liability protection. Law is well settled.

Business Transition: Choice of Entity

LLC - Limited Liability Company

- **An LLC combines features of a corporation and partnership. Owners (members) have liability protection from operations. Annual meeting not required.**
- **Creditor can only recover an assignee interest in LLC. IRS is trying to subject members to self-employment tax for members involved in operation. Not accepted everywhere - but almost.**
- **Fairly new creation, so law not as well settled.**
- **My favorite for most (but not all) businesses.**

LIMITED LIABILITY COMPANY (LLC)

- A business entity which can be taxed like a corporation or partnership.
- Allows for ongoing management control while at the same time allowing the “membership interest” to be gifted away.
- The membership interest can be valued at a “discount” for gift tax purposes.

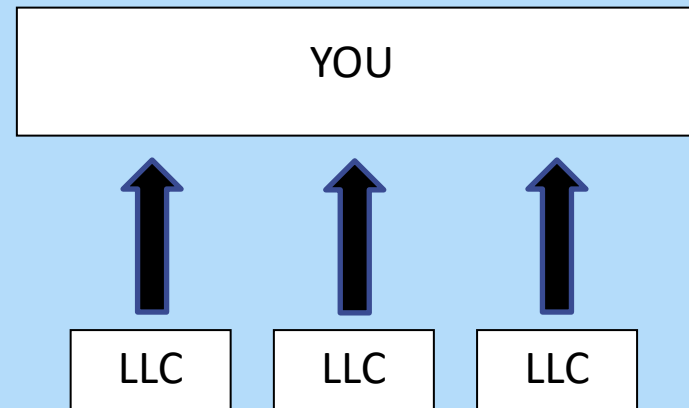
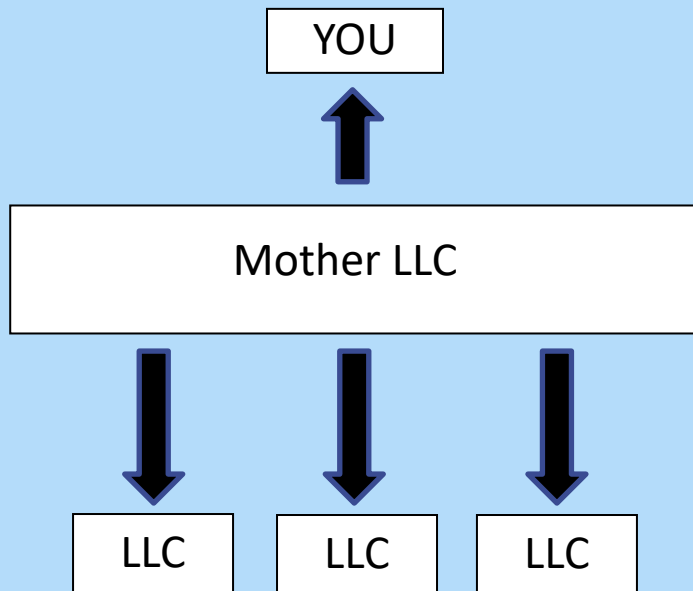
LIMITED LIABILITY COMPANY (LLC)

Typical LLCs

- The law is more settled, but there is not much case law. Our courts have relied on Delaware case law for guidance (Our Act models Delaware's).

Series LLCs

- Series LLCs are relatively new – not all states recognize them.
- You could lose protection in a non-recognition state.
- Just use as a holding LLC with wholly-owned subsidiary LLC.



ASSET PROTECTION

A corporation or LLC does not protect you from personal liability if your personal actions contributed to the “event” that causes the “injury.”

(LegalZoom is misleading)

ASSET PROTECTION

- **First step: buy a personal liability umbrella policy attached to your homeowners property & casualty policy.**
- **Second step: segregate your assets within insulated groups.**
- **Third step: dilute ownership among family members.**

ASSET PROTECTION

- **Protection From Lawsuits**
 - **Insurance products** (in Oklahoma)
 - **Offshore trust**
- **Protection From Nursing Homes/Health Care Costs**
- **Disability Income Insurance**
- **Protection from 2nd Spouse**

LONG-TERM CARE PLANNING (LTC)

- **Your Options:**
 - **Do nothing.**
 - **Spend private funds.**
 - **Have LTC insurance.**
 - **Arrange assets to qualify for state Medicaid assistance.**

Here are the statistics...

LONG TERM CARE PLANNING

- **Gifts create period of ineligibility to receive state aid. Look back period is 5 years.**
- **Period of ineligibility equals fair market value of gift divided by \$179.57 per day. (the average nursing home daily cost at time of printing.)**
- **So.... a gift of \$17,957 four years ago creates a period of ineligibility to receive State assistance of 100 days (17,957 divided by 179.57= 100) beginning from the DAY YOU ENTER THE NURSING HOME (not the day you make the gift).**
- **A gift of \$3,000,000 five and half years ago creates a ineligibility of 0 days. Outside the 5 year look back period.**

Every number on this Slide (except the 5 year look back) changes based on inflation, the poverty rate and a complex government formula that even I do not understand.

LONG TERM CARE PLANNING or FUNDING THE PLAN

So, you can use Life Insurance with LTC rider.

Valued Client, 68 year-old Female
Standard Non-Tobacco underwriting class
policy issued in Oklahoma

Your initial death benefit

\$200,000

Annual
Your initial premium

\$6,865.32

paid annually
for 37 year(s)

What is the IRR of the death benefit?¹

The Internal Rate of Return (IRR) is the rate at which the planned premium up to that year must be compounded each and every year to generate the death benefit.

Year	Age	Net death benefit	IRR
10	78	\$200,000	18.84%
20	88	\$200,000	3.46%
30	98	\$200,000	-0.19%
32	100	\$200,000	-0.58%

Tax free

Eligibility

An insured may receive benefits under this rider once the following conditions are met:

- • 90-day elimination period is satisfied (see below)
- Written certification from a Licensed Health Care Practitioner that the Insured is Chronically Ill is received at least every 12 months
 - A prescribed Plan of Care by a Licensed Health Care Practitioner for Covered Services is received at least every 12 months
 - All claims forms and written notifications are submitted and satisfactory.

Qualified Long-Term Care Services (Covered Services)

The insured may receive benefits for Qualified Long-Term Care Services as prescribed under a Plan of Care by a Licensed Health Care practitioner including, but not limited to:

-- Adult day care

-- Nursing home care services

-- Home health care

-- Assisted living

-- Hospice services

-- Alternative care services

Exclusions, Reductions and Limitations

This rider does not provide benefits for:

- treatment or care due to alcoholism or drug addiction;
- treatment arising out of an attempt (while sane or insane) at suicide or an intentionally self-inflicted injury;
- treatment provided in a Veteran's Administration or government facility, unless the Insured or the Insured's estate is charged for the confinement or services or unless otherwise required by law;
- loss to the extent that benefits are payable under any of the following: 1. Medicare (including that which would have been payable but for the application of a deductible or a coinsurance amount). This means that this rider does not pay for the Insured's Medicare deductible or coinsurance; 2. Other governmental programs (except Medicaid); 3. state or federal workers' compensation laws; 4. employer's liability laws; 5. occupational disease laws; and 6. any motor vehicle no-fault laws.
- confinement or care received outside the United States or its territories and possessions, other than benefits for Nursing Home Care Services and Assisted Living Facility Services as described in the International Benefits provision;
- services provided by a facility or an agency that does not meet the Rider definition for such facility or agency as described in the "Covered Services" section of this Rider, except as provided in the "Alternative Care Services" provision;
- services provided by an Immediate Family Member, unless: 1. the Immediate Family member is a regular employee of the service or care provider furnishing the service or care; 2. the service or care provider receives the payment for the service or care; and, 3. the Immediate Family member receives no compensation other than the normal compensation for an employee in his or her job category; and
- services for which no charge is or would normally be made in the absence of insurance.

Initial Coverage Information

Underwriting Class: Standard

LTC Specified Amount:

Initial LTC Specified Amount: \$200,000

This rider has its own face amount called the LTC Specified Amount, which is distinct from the policy's face amount. This is the maximum amount that can be accelerated, is chosen at issue and cannot increase. An increase to the policy face amount has no impact to the LTC Specified Amount, and it will be reduced should the policy face be decreased below the LTC Specified Amount. A partial surrender (withdrawal) will also decrease the LTC Specified Amount.

Maximum Monthly LTC Benefit Percentage: 2%  *x death benefit*

Duration Assuming Maximum Acceleration: 50

The maximum percentage of the initial LTC Specified Amount available for acceleration each month, used to calculate the Maximum Monthly LTC Benefit Amount. It is chosen at issue and cannot be changed.

Maximum Monthly LTC Benefit Amount:

Initial Maximum Monthly LTC Benefit Amount: \$4,000 

The maximum dollar amount that can be accelerated each month, determined by multiplying the initial LTC Specified Amount, adjusted for any decreases, by the Maximum Monthly LTC Benefit Percentage.

Life Insurance with LTC rider:

**Is like the vet that opened up the
Taxidermy shop next to his clinic – then
put up a sign that said:**

**“Either way you get your dog
back!”**

ESTATE PLANNING - INCAPACITY

- It is more important than ever to **have a Durable Power of Attorney.**
- Make sure it designates a **primary AND a secondary person** on the first page to act on your behalf.
- Will 2nd Spouse be Attorney in Fact? Remember that person controls Business affairs of Parent after Parent incapacity.

ESTATE PLANNING - INCAPACITY

2 MAIN TYPES OF DURABLE POWER OF ATTORNEY:

1) Immediate Durable Power of Attorney: whomever you designate has the immediate right to conduct business on your behalf. Can be medical or business or both.

2) Springing (Contingent or Delayed) Durable Power of Attorney: this document does not become effective until a doctor determines you to be incompetent. Can be medical or business or both.

A word about Durable (lasts beyond incompetency) vs. Non-Durable (only good while competent) POAs...

If you invested one cent at 5% interest in 1492, the year Columbus sailed the ocean blue, how rich do you think you would be today?



\$192,325 (without tax deferral)

\$610 million (with tax deferral)

Example 1

Parent – Mom 72, Dad 79

6 Qtrs 960 ac (~\$4,000/ac)	\$3,800,000
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Equipment (no combine of course)	900,000
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Cash on hand	300,000
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Investment acct	750,000
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5 yr lease on 600 acres	<u>0</u>
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Fair market value of estate	\$5,750,000
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Parents are ready to slow down.

Farming Son. Nurse Daughter. School Teacher Daughter. All live within 20 miles.

Goals: Son ends up with land but daughters are treated fairly.

Concerns: Nursing home cost. Estate Taxes. Parent having enough income to live on.

Example 1 continued

Basically a value freeze with gift/sale.

Parent transfers property to You for 3% - 30 year note and first mortgage for \$2,000,000 (after factoring in remaining assets, this is roughly the amount the interested parties are short after balance of land transferred to you). Parent also reserves life estate on principal residence. Parent changes Will/Rev Trust so all assets go to remaining two Interested parties at 2nd death of parents.

You make \$8,000/year note payment to parent and at 2nd death to interested parties.

Interested parties get roughly equal distributions.

After 5 years, land is protected from nursing home calculation – but not note if still owned by parent.

Virtually eliminates any risk of Estate Tax Cost.

Example 1 continued

Want more excitement in your plan?

- 1. Gift \$2,000,000 promissory note to interested parties. Now, after passage of “lookback” period the promissory note is protected from nursing home claims. If parent needs more income loan payments can be “gifted” back to parent.**
- 2. As parents’ equipment depreciates out, you can buy the “good” equipment from parent for depreciated value (any more results in “gain” to parent).**
- 3. Instead of gift and promissory note, land is put in Limited Liability Company (LLC). Shares are gifted to you over time or you and interested parties over time. As long as you control a majority interest and manager position. Upside: No interest cost, parent stills owns and controls for now. Downside: Doesn’t freeze value for transfers or Estate Tax. No effective asset protection from Nursing Homes.**

ESTATE PLANNING

NOT JUST FOR THE RICH!

Intangible Cost

- **Ease of settlement, special needs of children. How do I want my business to transfer?**

Tax Cost

- **Estate tax, gift tax exclusion, reduce income taxes now and at death.**

Transfer Cost

- **3 ways to pass title to heirs**

Asset Protection

- **What can you do to reduce exposure to risk?**

WHAT SHOULD YOU DO?

1. **Assemble the Facts:** need balance sheets, your last tax return, and a list of legal names.
2. **Develop a Plan:** what do we want the end to look like? How will we get there? Who will be in charge?
3. **Implement and Fund the Plan:** gather legal descriptions ... is the titling right? Are the beneficiaries right?
4. **Review The Plan:** you need to review your estate planning documents when something “big” happens or every 3-5 years.

THE END

Disclaimer: This presentation and materials are meant to provide a general, but certainly incomplete, understanding of succession planning. Tools mentioned should be implemented only after discussion with a professional who has become familiar with your personal situation.

Thank you for your time and attention.

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