YOU AUTO KNOW©
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PLAN FOR BUSINESS SUCCESSION NOW!

Sam is 55 years old and the sole owner of an automobile dealership valued at approximately $10 million. He has no plans to retire anytime in the near future.

Sam is married with four adult children. Sam's wife, Mary, has always focused on raising the children and has no experience running the business. Two of Sam's children are working for the dealership. One child graduated from college and works in the business. He is still inexperienced, but is smart and one day will run the dealership. The other child in the business flunked out of college, was given a low level job at the dealership, works his required hours, but doesn't show much aptitude or enthusiasm. Of the children who are not involved in the dealership, one is a happily married homemaker with three kids. The other is divorced, has gone through a number of jobs recently, and is sometimes combative with the family and Sam suspects that he may have a drug or alcohol problem.

If he were to die, Sam wants to: (1) take care of Mary; and (2) if his wife is also gone, divide his estate equally among his children. However, he also wants to ensure that the children who are actively involved in the business have control. Sam also wants to minimize opportunities for mismanagement of his business after his death. Finally, Sam would like to both reward one highly competent manager/employee for his years of work and cause that manager to stay and help run the business.

Sam and Mary created wills years ago when the children were young, but they haven't done any more estate planning. Sam's current will says that everything goes to his wife, and if his wife is gone then everything goes to his children equally. Sam's will names Mary and then his brother to serve as executor.

Recently, General Motors directed its field staff to urge every dealer to have a succession plan in place. I wrote this *You Auto Know*©a couple of years ago and thought that re-issuing it now would be appropriate.

What Happens If Sam Dies and Mary Survives?

Here are a few of the consequences if Sam dies without taking the time to make sure his plan matches his wishes:

- The dealership will be under Mary's ownership and control, unless she chooses to sell the business. Mary is unlikely to be able to run the business well.
- The one highly competent manager/employee Sam intended to reward for his years of work will get nothing at Sam's death, and the change may cause him or her (and other valued employees) to leave the dealership.
- The kids may begin to bicker with Mary and themselves about how the dealership should be run. Mary's absolute control over the business, combined with her lack of experience, cause serious tension within the family, including fighting between the two kids involved in the business.
- Mary can sell the business, give management control of the business to whomever she wishes, or sell the business (during life or at death) to whomever she wishes. In other words, once Sam has died, he has totally lost control over who runs and owns the business.
- Sam's failure to do fairly straightforward estate tax planning may end up costing the family around $1.75 million in estate taxes based on current law, which would be due after Mary's death *along with Mary's share of estate taxes*. A large tax bill for the family may force the family to sell the dealership, perhaps at fire sale pricing.

What Happens If Both Sam and Mary Die?

The consequences are no better:

- The dealership (and everything else Sam owned) will be under his brother's temporary control, as executor. Full ownership and control will eventually pass to the four children, equally, unless the executor opts to sell the business.
- The one highly competent manager/employee Sam intended to reward for his years of work will again get nothing at Sam's death, and the change may cause him or her (and other valued employees) to leave the dealership.
- The children will almost certainly begin to bicker about the dealership. The children will all have equal ownership standing, so the children not involved in the business have the same ownership interest and control as the two children in the business. Further, the estate will pass through the probate court, meaning that detailed information about the dealership's value and who will own the dealership is a matter of public record.
- Sam's death (and failure to do tax planning) triggers around $3.3 million in estate taxes based on current law, which is generally due nine months after Sam's death. Again, a large tax bill for the family may force the family to sell the dealership, perhaps at fire sale pricing.

What Could Sam Have Done Differently?

Sam could have done personal and business succession planning. Business succession planning is an investment in the future of the business for Sam's family, employees, and clients. With proper planning, it is possible to avoid or reduce hefty estate taxes, protect the dealership, and ensure that the proper individuals will be able to operate the store and the rest of the family will be financially protected. Whether or not the government is your favorite "charity," it may well receive a part of your assets when you die. You can plan to reduce the amount you give, but the fact that the government gets a share may be only one of the problems for your family and for the business you have built.

All of the bad things described above could have been eliminated or at least controlled through the proper use of business succession planning. While you're busy growing your business, be sure to give some thought to protecting its future.

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.