

**GIVING BUSINESS INTERESTS
TO THE
NEXT GENERATION**

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LAW OFFICE OF WILLIAM C. STALEY
Woodland Hills

February 9, 2006
Airtel Plaza, Van Nuys

Law Office of William C. Staley

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This law office provides expert tax and legal advice and prepares documents for tax-related business transactions and nonprofit organizations. Core areas of practice are:

Business Entities

- *Choosing the right entity*
- *Organizing, reorganizing and dissolving entities*
- *Creating holding companies to isolate liabilities*

Business Transitions

- *Selling a business*
- *Mergers and acquisitions*
- *Buy-sell agreements among business owners*
- *Transferring a business to the next generation*
- *Giving stock to employees and family*

Nonprofit Organizations

- *Establishing new organizations*
- *Public charities, private foundations, trade associations*
- *Resolving difficult tax and board issues, including compensation*
- *Reorganizing and dissolving organizations*

Outside general counsel role

- *Ongoing legal representation for business owners and nonprofits*
- *Introducing owners and managers to other legal and tax specialists, investment bankers and consultants as needed (see www.californiataxattorney.com)*

Special Counsel Role

- *Providing tax advice about specific transactions*
- *Resolving complex situations requiring extensive analysis, business, law and tax experience, sometimes involving difficult people*

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Bill has advised Southern California businesses and nonprofits since 1981. **Bill Staley** (attorney) and **Susan Rognlie** (legal assistant and secretary) have worked together since 1981. They are fortunate to have many clients with whom they have worked since the 80's and 90's. Many bar associations, accounting and business groups invite Bill to address them year after year.

Clients of this team benefit from their experience in large law firms, from Bill's leadership positions with the Tax Section of the Los Angeles County Bar Association, Bill's active role in the Tax Section of the American Bar Association, and from their community activities. If this law office can't help efficiently, they will say so. Bill or Susan can probably provide a referral to someone they know personally.

Bill and Susan will be straight with you. They don't encourage gamesmanship in business deals, but they help their clients deal with it. They diligently protect clients' confidential information. They take their ethical responsibilities very seriously. They use technology (like their websites, email and document assembly systems) to solve client problems efficiently.

This law office is located in Woodland Hills (in the northwestern part of the city of Los Angeles) so that Susan can be near her children, who are in college, high school and elementary school and so that Bill can be near five of his 13 nieces and nephews. Clients of this office are based all over Los Angeles, Ventura, Orange, San Bernardino and Riverside Counties. Other clients now live outside California, but have business interests here. Most clients of this law office were referred by accountants, attorneys, nonprofit consultants, financial advisers or investment bankers. This office's clients are in manufacturing, distribution and service businesses, and in real estate development and investment. Many have family businesses and/or substantial real estate interests.

Speaking of families, Bill and Susan each is the eldest of many siblings. They know that no one is perfect and that everyone needs help once in a while.

Bill and Susan are happy to receive referrals and to receive calls from people who could use their help.

Giving Business Interests to the Next Generation

Presenters:

Bill Staley, Business/Tax Attorney

Ernie Doud, Jr., Doud Hausner &
Associates

February 9, 2006
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Presentation by

Ernie Doud, Jr., President

Doud Hausner & Associates

Consultants to Family Enterprises in Transition

Keeping the Family Intact - Working With Family Business Clients

February, 2006
Van Nuys, CA

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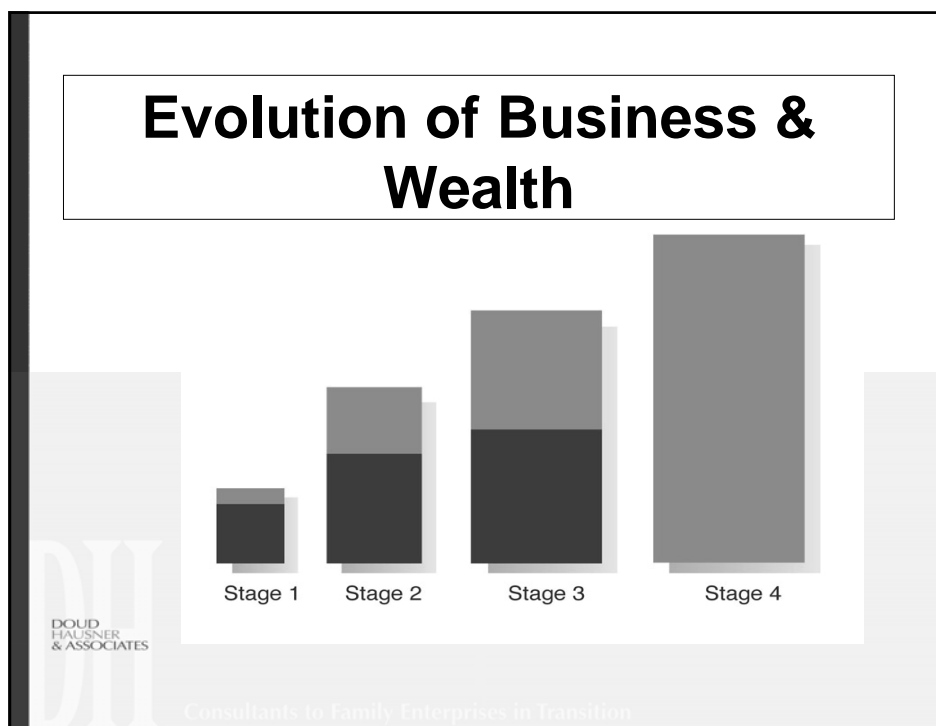
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FAMILY BUSINESSES *PERVASIVE; POWERFUL*

- 80% of all business in the U.S.
- 1/3 of Fortune 500
- 60% of the labor force
- Over half the GDP

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& ASS

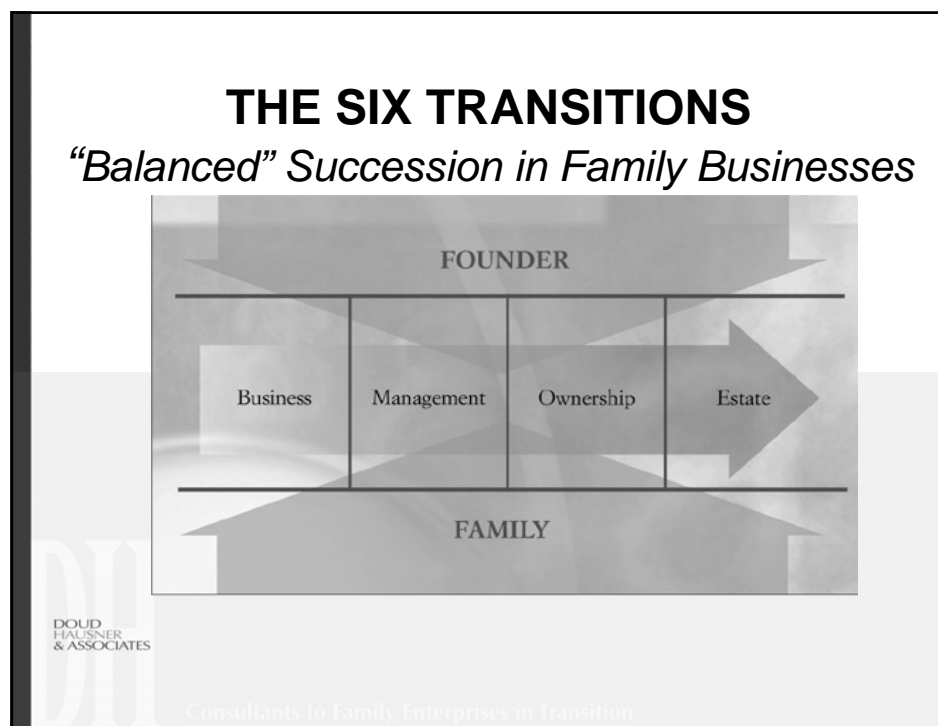
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Factor	Stage 1	Stage 2	Stage 3
Ownership	Single Owner	Owner's Family	Cousins
Mgmt. Control	Owner	Family Execs	Family & Non Family
Governance	None	Informal	Formal
Mgmt. Systems	Informal	Professionalizing	Professionalized
Wealth Profile	The Business	Some Indep.	Substantial Indep.
Liquidity Options	Few	Moderate	Many

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IN ALL FAMILY BUSINESSES:

Everybody wants:

- Business Prosperity
- Family Harmony
- Personal Well Being

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IN ALL FAMILY BUSINESSES:

Everybody wants:

- Business Prosperity
- Family Harmony
- Personal Well Being

They usually get:

- Under-performing businesses
- Unresolved conflict
- Anxiety

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BARRIERS – THE FOUNDER

- No personal vision/passion beyond the business
- Fears loss of identity
- Can't choose a successor
- Reduced risk tolerance
- Need for income/financial security

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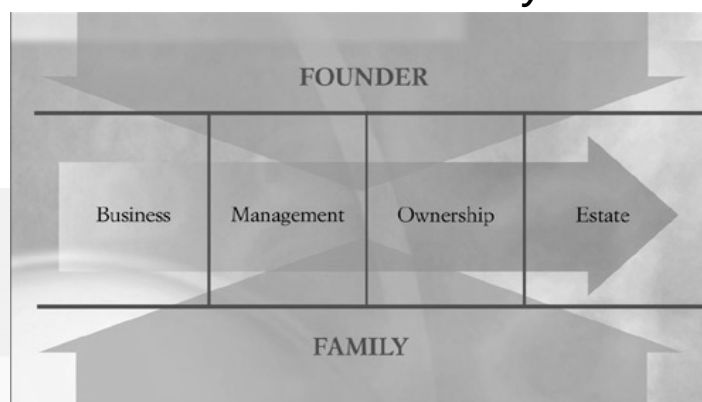
BARRIERS – THE FAMILY

- Family vs. Business – The Values War
- Lack of Shared Vision
- Family businesses as T.E.G.W.A.R.
- They talk – but rarely communicate
- Experts at ignoring the elephants in the living room

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THE SIX TRANSITIONS

“Balanced” Succession in Family Businesses



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STILL CURIOUS?

- **“Hats Off to You – 2: *Balancing Roles and Creating Success in Family Business*”**
by Ernest A. Doud, Jr. and Lee Hausner
- **“The Evolution of Family Business and Wealth,”**
by Ernest A. Doud, Jr.

Available Online at:
www.doudhausner.net

Consultants to Family Enterprises in Transition

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Consultants to Family Enterprises in Transition

Presentation by

Bill Staley,
Business/Tax Attorney

This presentation should be viewed only as a summary of the law as of the date shown on the first slide. This presentation is not a substitute for legal or tax consultation in a particular situation. Your comments and questions are welcome.

The Tax Issues

- **Estate tax**
 - 46% of the net value of estates (dropping to 45% after 2006)
 - No tax on assets passing to a spouse
 - So the tax generally applies at the death of the second spouse

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The Tax Issues

- **Estate tax**
 - No *estate* tax on the first \$2M of assets passing to others (\$3.5M after 2008)
 - With proper planning, each couple can avoid *estate* tax on \$4M of assets (\$7M after 2008)

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The Tax Issues

- **Gift tax**
 - Annual Exclusion: No *gift* tax or reporting on gifts of up to \$12,000 per donor per recipient per year, to an unlimited number of recipients
 - So a husband and wife can give \$24,000
 - Unlimited Exclusion: Payments to educational and medical institutions
 - Not for books, dorm fees or food

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The Tax Issues

- **Gift tax**
 - Lifetime *Gift Tax* Credit Amount: Each person can give up to \$1M over and above the excluded amounts, during life.
 - At death these gifts reduce the \$2M that passes free of *estate* tax.
 - So a husband and wife can give \$2M during life tax-free, over the *gift tax* exclusions.
 - These gifts must be reported on annual gift tax returns, even if no tax is due.

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The Tax Issues

- **Estate and Gift taxes**

- During 2010 the estate tax is repealed.
- After 2010 the estate tax is “un-repealed” and the estate and gift tax rules revert to the 2001 rules.
- What is really going to happen?

Who knows? A 15% estate tax and a \$3.5M exclusion...???

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The Tax Issues

- **Income taxes**

- For gifts, the recipient takes the donor’s income tax basis (increased by any gift tax paid).
- For property passing from a decedent, the basis adjusts to the value on the date of death.
 - After 2009 the recipient takes the donor’s tax basis, with a limited basis adjustment.

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The Tax Issues

- **What it means**
 - Until the estate tax is actually repealed or the bar is raised so high that a particular family will not have to worry about estate tax, assume the estate tax will apply.
 - Give to the kids until it hurts.
 - On paper, paying gift tax is better than paying estate tax on the same asset.
 - Make each gift count.

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The Tax Issues

- **What else**
 - Get the kids in on the ground floor for new opportunities, to avoid making gifts after the appreciation occurs
 - Use the gift tax annual exclusion every year, and use it well
 - So start already
 - Do the estate planning basics first
 - Use all available discounts

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Gift Tax Discounts

- Lack of control
 - Minority interest
- Lack of a ready market
 - Minority interest
- Time value of money
 - GRAT - Donor retains income for a while
 - Charitable Lead Trust – Charity gets the income for a while

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Keep the Gifted Interests in the (Happy) Family

- Concerns
 - Divorce
 - Creditors
 - Sibling wars
- Techniques
 - Buy-sell agreements
 - Trusts
 - Escape hatch (options to buy or sell)
 - Mediation and arbitration clauses

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What to Give to Whom – “Equalizing Gifts”

- Interests in active businesses
- Interests in passive investments
- Life insurance

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Part Gift - Part Sale

- Sell some stock, give some
- Sell, take back a note and forgive payments
- Self-cancelling notes
- Private annuity

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Grantor Trust

- Transfer of assets to a “defective” grantor trust is respected for estate and gift tax purposes, but not for income tax purposes
- A sale to this trust has no income tax consequence
 - No gain is recognized on the sale
 - The transferor continues to owe the income tax
 - So the parent can pay the income tax on assets already held by the children for gift and estate tax purposes. (The IRS hates this, but might be stuck.)
 - Great for the parent who has the cash
- The assets are not included in the transferor’s estate at the transferor’s death

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Family Limited Partnership

- Minority discounts are still respected if the FLP is organized and operated properly
- Facilitates transfers and management of real property and portfolios of securities
- Prevents “atomization” of wealth
- Preserves long-term investment goals

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Two thoughts ...

1. Start.
2. Consider working with lawyers and consultants who are familiar with these issues and can make it easy for you.

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Thank you

Bill Staley

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**More Seminars Presented by
the Law Office of William C. Staley**

4/06	Selling a Business *Torrance*
6/06	Private Foundations and Community Foundations *Beverly Hills*
8/06	Giving Stock to Employees – and Other Incentive Programs
10/06 and 2/07	Reorganizing a Business for Growth
4/07	Selling a Business
6/07	Selling the Business to a Family Member
8/07	Effective Boards of Directors for Nonprofit Organizations