

## Succession Planning: Now is the Time to Develop a Plan



Christopher G. Schultz

As the economy progresses through an economic cycle and continues to improve, business owners are seeing the value of their business recover. Now is a good time for business owners to develop a plan for their company's future, even if retirement is not on the horizon.

A succession plan is a long-term process put in place by the business owner that identifies who the business will be transferred to upon the owner's retirement.

While death, disability or divorce might seem like remote possibilities to business owners, the havoc they leave behind can destroy a business. With a succession plan in place, a crisis situation can be avoided.

The succession process begins with communication. It is important for the business owner to identify those who are candidates to succeed to the business, which can sometimes be a timely and challenging process. If a successor is not yet qualified to take control of the business, a viable option is to bring in an interim manager or executive to operate the business until the successor develops the necessary skills to take control of the business. Another option is for the business owner to serve as a consultant to the successor by offering their experience and knowledge of the industry to the successor. This also provides cash flow to the retiring owner.

When planning for succession, the business owner will meet with an attorney, accountant and financial manager to examine their current and forecasted income needs and update their estate plan. The professionals will also assist the business owner in determining when will be the best time to withdraw from the business, how to fund the transition, the tax implications of the transition, the source of funds to pay the business owner, and whether the business generates enough income to pay both the business owner and the successor.

During the planning and implementation process, the value resides in the business and control is transitioned to the successors.

Upon completion of the process, the objective is to convert the value into income for the retiring business owner and transfer control to the successor.

Once a successor has been identified and a transition plan is in place, the next phase of the process is to create a buy-sell agreement. The buy-sell agreement:

- transfers the actual value of the business to the retiring owner,
- gives control of the business to the successor,
- defines the timing of the transfer,
- determines the price of the transfer,
- determines the payment terms, and
- can include the source of funds to pay for the transfer.

Consideration has to be given to the tax basis for determining capital gains and losses on the sale of the interest in the business, for both the retiring business owner and the successor. Life insurance is often used as a tool to provide the liquidity to pay for the purchase. Also, life insurance is a way of converting value into cash. In a family-owned business, a gifting program to transfer ownership to the next generation is implemented where a percentage of ownership is gifted over a term of ten years or more.

Developing a succession plan requires time, effort and energy, but having a proper plan in place allows a business owner to achieve maximum value for their life's work and peace of mind knowing the business will continue to thrive upon their withdrawal from the company.

Attorneys at CMDA effectively develop succession plans for businesses of all sizes. Even if retirement is not on the horizon, business owners need to start planning for the future. To discuss the development of a plan, please contact our firm.

*Christopher G. Schultz*

*Christopher G. Schultz, the managing partner of the Firm, focuses his practice on representing businesses in many areas of the law, including business succession planning. Additionally, he assists a great number of clients with estate and elder law planning. He can be reached at (734) 261-2400 or cschultz@cnda-law.com.*

## E-3 Visas: An Alternative to the H-1B Lottery



Sara E. Lowry

**B**oth the H-1B visa and the E-3 visa allow U.S. businesses to employ foreign workers in specialty occupations, however the differences between the two are important for employers to understand.

The United States Citizenship and Immigration Services (USCIS) places a cap on available H-1B visas at 65,000. Within five days from the start of the filing period, USCIS received 124,000 petitions. A lottery determined which petitions were selected, subject to few exemptions. With an astonishing 59,000 petitions not selected, the question for employers becomes, “Are you forced to leave your available position up to a lottery?” The work your company does is important, and your employees are the driving force behind your product or service. Nothing should be left to a lottery, least of all your employees.

Additional options are available to employers, and the E-3 visa is just one example. The E-3 visa is a specialty occupation visa only available to Australian citizens. A specialty occupation is one that, “requires theoretical and practical ap-

plication of a body of knowledge in professional fields and at least the attainment of a bachelor’s degree, or its equivalent, as a minimum for entry into the occupation in the United States.” -INA 214(i)(1).

Employers benefit from the E-3 visa because nothing needs to be filed with USCIS, and the \$3,000 in fees that the H-1B visa requires does not apply. Furthermore, the E-3 visa program is open to all businesses, not just Australian-owned or -operated companies, which is different from other E-Visas. An employer must still submit a Labor Condition Application with the Department of Labor, ensuring a prevailing wage for the Australian worker. E-3 visas are valid for two years, and there is no limit to the number of times it may be renewed.

Employers who are looking for specialty labor, and prefer not to play the odds, should consider an E-3 visa.

Sara E. Lowry

*Sara Lowry, an attorney in our Livonia office, concentrates her practice on municipal law, litigation, and immigration law. She can be reached at (734) 261-2400 or slowry@cnda-law.com.*

## Creativity, 3D Printing and the Law



Kali M. Lester

**T**he marketplace for handmade and unique items is expanding thanks to websites like Etsy, eBay, and Pinterest. These sites allow crafty entrepreneurs to reach a large network of consumers at a very low cost. The use of 3D printers is becoming increasingly popular and has the potential to expand the marketplace for handmade and unique items even further. Previously only

available to large-scale producers, 3D printers are becoming more economical and provide artists and entrepreneurs with another tool to create their work.

As some entrepreneurs have already figured out, 3D printing brings its own set of special legal challenges. One such entrepreneur is Fernando Sosa who operates a custom 3D printing business. Sosa’s business offers to make models, prototypes, and replicas of new products and also sells original items. One original item in particular got Sosa into some trouble with cable network HBO. Using a 3D printer, Sosa

designed, produced, and sold a cellphone charging station in the form of a throne based on HBO’s popular series “Game of Thrones.”

Sosa received a cease and desist letter from HBO, requesting that he stop selling the item because it was the intellectual property of HBO and Sosa did not have a license to sell it. Sosa, unable to acquire a license, has since had to issue refunds for the thrones already sold and discontinue the item on his website.

Sosa’s story is just one example of the challenges that accompany this new, exciting technology. Artists and entrepreneurs need to be vigilant to ensure their work is protected, if possible, and not infringing on any existing rights, licenses or laws.

Kali Lester

*Kali Lester, an attorney in our Livonia office, concentrates her practice on municipal law, utility law, and appellate law. She can be reached at (734) 261-2400 or klester@cnda-law.com.*

## EEOC Releases Guidelines for Religious Dress and Grooming in the Workplace



Jim Acho

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that prohibit employment discrimination.

On March 6, 2014, the EEOC released a "Religious Garb and Grooming in the Workplace: Rights and Responsibilities" guideline that all employers, managers, and supervisors should review. The EEOC reports that it received 3,721 charges alleging religious discrimination in 2013, more than double the 1,709 charges received in 1997.

The EEOC cites the following examples as religious garb and grooming practices:

- Wearing religious clothing or articles (e.g., a Muslim hijab (headscarf), a Sikh turban, or a Christian cross);
- Observing a religious practice against wearing certain garments (e.g., Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of not wearing pants or short skirts); and
- Adhering to shaving or hair length observances (e.g., Sikh uncut hair and beard, Jewish peyes (side locks), or Rastafarian's dreadlocks).

The EEOC emphasizes that employers are required to make exceptions to allow employees who request religious accommodations, unless doing so presents actual undue hardship to the operation of the business. Co-worker disapproval, customer preferences, or simply assuming the accommodation would pose a problem does not constitute undue hardship. If work conditions pose an actual undue hardship on the operation of the business, such as workplace safety, security, or health concerns, employees religious dress or grooming practices do not need to be accommodated.

The EEOC also reports that employers must avoid workplace harassment, retaliation, or job segregation for those employees' who request religious accommodations.

It is advisable for employers to make a case-by-case determination of all religious accommodation requests. A copy of the EEOC's "Religious Garb and Grooming in the Workplace: Rights and Responsibilities," guideline and factsheet are available on our website at [www.cmda-law.com](http://www.cmda-law.com).

Jim Acho

*Jim Acho, a senior attorney in our Livonia office, concentrates his practice on employment, commercial, and personal injury law. He can be reached at (734) 261-2400 or [jacho@cmda-law.com](mailto:jacho@cmda-law.com).*

## CMDA Happenings

### Attorneys Named Partners of the Firm

We are pleased to announce that attorneys Patrick Sturdy and Andrew Brege have been named general partners of the Firm.

Mr. Sturdy works out of our Livonia office and has significant experience with post-secondary institutions with an emphasis on employment and equal opportunity law. He also focuses his practice on corporate and business law and intellectual property. He can be reached at (734) 261-2400 or [psturdy@cmda-law.com](mailto:psturdy@cmda-law.com).

Mr. Brege works out of our Grand Rapids office and centers his practice on municipal and insurance defense, with a focus toward civil rights and employment practices liability. He also focuses his practice on general municipal law. He can be reached at (616) 975-7470 or [abrege@cmda-law.com](mailto:abrege@cmda-law.com).

### OMA Presentation at Risk Management Workshop

Attorneys Eileen Husband and Andrew Brege gave a presentation on the Open Meetings Act (OMA) at the Michigan

Municipal Risk Management Authority's Risk Management Workshop recently held in Lansing, MI.

All members of governing bodies with decision-making authority must comply with the OMA or be subject to money damages, as well as possible injunctive relief. If your governmental entity is interested in a similar presentation, please contact Mr. Brege.

### CRAM Conference a Success

Attorneys from our Firm recently participated in the County Road Association of Michigan's 2014 Annual Highway Conference held in Lansing, MI. The conference was attended by managers, engineers, finance directors, superintendents and commissioners of Michigan's county road agencies.

Attorneys Haider Kazim, Andrew Brege, and Lindsey Kaczmarek enjoyed having the opportunity to further enhance and develop new relationships with members of Michigan's many county road agencies.



CUMMINGS•MCCLOREY  
DAVIS & ACHO, P.L.C.  
ATTORNEYS AND COUNSELORS AT LAW

33900 Schoolcraft Road  
Livonia, Michigan 48150

PRSR STD  
US POSTAGE  
PAID  
PERMIT NO. 63  
SOUTHFIELD, MI

# Office Locations

## MICHIGAN

**Livonia**  
33900 Schoolcraft Road  
Livonia, MI 48150  
Telephone: 734.261.2400  
Facsimile: 734.261.4510

**Sterling Heights**  
43409 Schoenherr Road  
Sterling Heights, MI 48313  
Telephone: 586.731.5000  
Facsimile: 586.803.1034

**Traverse City**  
400 West Front Street  
Suite 200  
Traverse City, MI 49684  
Telephone: 231.922.1888  
Facsimile: 231.922.9888

**Grand Rapids**  
2851 Charlevoix Drive, S.E.  
Suite 327  
Grand Rapids, MI 49546  
Telephone: 616.975.7470  
Facsimile: 616.975.7471

## CALIFORNIA

**Riverside**  
3801 University Avenue  
Suite 560  
Riverside, CA 92501  
Telephone: 951.276.4420  
Facsimile: 951.276.4405

## MISSOURI

**Kansas City**  
1600 Baltimore Avenue  
Suite 200B  
Kansas City, MO 64108  
Telephone: 816.842.1880  
Facsimile: 816.221.0353

On Law is a monthly publication from the law firm of  
Cummings, McClorey, Davis & Acho, P.L.C.

On Law is intended for informational purposes only and should not be used as a substitute for individual legal advice. Please consult an attorney regarding your particular situation.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or to be removed from the mailing list, please contact Jennifer Sherman.

To reference previous issues of On Law, please visit [www.cmda-law.com](http://www.cmda-law.com).



CMDA: On Law  
33900 Schoolcraft Road  
Livonia, Michigan 48150  
(734) 261-2400  
E-Mail: [jsherman@cmda-law.com](mailto:jsherman@cmda-law.com)

### Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.



CUMMINGS•MCCLOREY  
DAVIS & ACHO, P.L.C.  
ATTORNEYS AND COUNSELORS AT LAW