# WHEN A CLIENT DIES

By Steven A. Meyerowitz

**A client's death creates many issues — for the client's family and business, but also for the lawyer who represented the deceased. Planning ahead is crucial.**

Wayne C. Buckwalter, a partner in the Philadelphia office of Cohen Seglias Pallas Greenhall & Furman P.C., remembers the client very well. She was in her 40s, he says, and she came to his office on a Friday to sign the documents he had prepared to create an estate plan. "She was happy and healthy" that day, and their meeting was quite straightforward.

Four days later, the following Tuesday, the client's sister called Buckwalter. She told him the client had died unexpectedly on Monday. "She came out of work, had a brain aneurysm and passed."

### A Fact of Life

Clients die. Lawyers who represent individuals in trusts and estates matters, bankruptcy cases and personal injury law know that all too well. But it also is true for lawyers who represent companies and businesses. For all the talk about "institutionalizing" client relationships and "representing the corporation," the truth of the matter is that lawyers always represent people — sole proprietors and company presidents, chief executive officers, chief operating officers, senior executives, in-house counsel, shareholders, directors and others — even when the checks come from a business entity.

When a client dies, the client's family needs time to grieve, and lawyers absolutely must respect that. Litigation will be put on hold until an executor or estate administrator is appointed. Business deals should be tabled. But the marketplace and competitors can be or

can seem to be coldhearted. Delays can impact and perhaps devastate the deceased client's business. As Buckwalter observes, "The most valuable asset of a privately held company is the owner, who has generated years of goodwill, personal relationships and skills that are not immediately or easily replaceable."

Properly planning a transition can be critically important, not just to the client's company, but also to the client's family's future financial interests, as well as to the client's company's employees and suppliers. Indeed, a succession plan can be key for all concerned parties, including the client's lawyer, who most assuredly will want to continue the representation in some fashion.

existing employees or from new employees, according to Wayne Buckwalter of Cohen Seglias. That will help to enable the personal relationships and goodwill created by the owner to stay with the company. A succession plan typically targets in-house people, often including family members, who can take over in the event of an owner's or senior executive's death. This involves taking an inventory of the skills of the family members and existing employees and finding a successor if one does not emerge. "It does not just happen," he points out.

Buckwalter adds that the company's stock should be put into a trust so that "the company can keep operating without any

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**First Things First: The Plan**

Timothy M. Finnerty, a certified public accountant and a member of the Harrisburg office of the law firm of McNees Wallace & Nurick L.L.C., believes that a lawyer has to make sure his or her client has a succession plan ready to take effect upon the client's death. It is important "to make sure the client has thought it through and a plan is in place," he says.

Abbe I. Herbst, a shareholder in the New York City office of Anderson Kill & Olick P.C., a law firm that also has an office in Philadelphia, agrees about the importance of a succession plan. "Where a business entity is the client and a sole proprietor dies, the importance of succession planning becomes clear. It makes sure the business does not die with the client," Herbst says.

It is important to "plan consciously" how to select the future public face of the company from family members or

delays that the probate process would engender." The plan also has to consider income and estate taxes, he adds, and may want to rely on life insurance as a funding source. The goal is to "avoid surprises" following the tragedy, he states.

Of course, merely because a business owner has established a succession plan does not necessarily mean that the lawyer's work is done. Finnerty says a corporation "is a living, breathing thing" and he recommends that a succession plan be revisted every year or two. "We look at it at the end of the year, and we might tweak it," he suggests, because "people come and go, and roles and responsibilites change." Buckwalter also says lawyers should touch base with their clients regularly to see if they have started a new business or bought a vacation property or the like. "These things happen," he says, and they can be put into any existing trust to alleviate transition concerns.


A lawyer has to make sure the client has a succession plan in place so "the business does not die with the client."

## Caught Short

Despite all best efforts, there are many instances when a business owner refuses to consider his or her mortality or simply will not execute documents creating an estate plan or a line of succession, even after having discussed them and paid to have them drafted. When such a person dies without a succession plan in place, a lawyer's leadership may be even more important for the survivors than when such a plan has been put in place.

Abbe Herbst of Anderson Kill says the client's attorney should be "familiar with the projects" the client was working on and should know who the company's "second-in-command or valuable assistant" is in order to allow for continuity. The lawyer should also know the company's secretaries and administrative assistants, because they can be invaluable resources about what's going on. Indeed, where there is no succession plan, the company's attorney can become an "irreplaceable member of the team" following the leader's death, calling meetings with the remaining senior management and helping to direct the transition, Herbst says.

Finnerty agrees. He says his clients often include him in strategic meetings where he gets to meet the top two or three people in the business, those who could step up to the top in the event of a leadership loss. That helps him with transition planning, he says. Lawyers who have been able to take that role can, after the fact, call a meeting of the management team to inform them about how the succession plan will be implemented or to put a plan in place for the benefit of the company. "Depending on the exact person who has passed away, you may have a shareholders or directors meeting," he says. Finnerty believes that the remaining management "would be interested in hearing the lawyer's observations about the appropriate people to lead the company."

There may be no other time when the lawyer's "counselor" role is more meaningful.

## The Counselor

It is a best practice for lawyers, from the time a client becomes a client, to interact with that client on a regular basis. Among other things, it helps the lawyer-client relationship flourish to a greater extent than if the lawyer rarely sees or communicates with the client. This history of lawyer-client contact will also

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help the lawyer guide the client's heirs and business associates upon the client's death. There may be no other time when the "counselor" portion of a lawyer's role is more meaningful or significant. ✪

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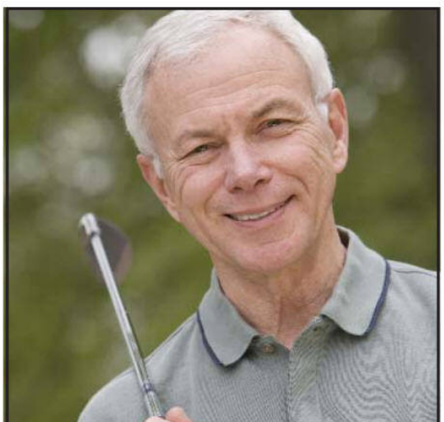

## Preparing to Cap Off Your Career?

The editors are planning to focus on retirement in an upcoming issue of ***The Pennsylvania Lawyer***, and we'd like to hear from you, our readers, about this topic. See page 59 for more information.

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