

# MOLDENHAUER & ASSOCIATES

## JULY NEWSLETTER

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After a terrible May, the markets rebounded for one of the best June's on record. As I have mentioned in past newsletters, the volatility we see in today's markets are unprecedented. This is all the more reason to have a good relationship with a quality financial advisory firm that will be there for you.

Years ago, when we started the required "review meeting program", it was uncommon for firms to invite clients in for periodic reviews. The program became so popular that we increased the number of conference rooms to 5, to meet peak activity times. We are considering a 6th conference room in the near future.

I share this information as a reminder that our mission focuses on client service. For those clients on a regular review schedule, you are appreciated. For those clients who have fallen off a regular review schedule, please call to get back on a regular schedule. We do not charge clients for periodic reviews, but they have tremendous value for concerned clients. These meetings help us help you.

On the same path, over the past 30 days, I have had several client meetings where we discovered that wills have become out of date because of family changes. Out of date wills create big problems. In at least 3 other instances, during client reviews, we had noticed that business succession agreements were out of date. In one case, where the client planned to obtain a Buy/Sell document 2 years ago, the attorneys still had not completed the documents.

These are all important concerns. All of our advisors are here to help you. But you, as the client, must be proactive for the work to be accomplished.

Kathy and I are now in WNY and, while I'll be in South Carolina for a week or more in July, I will be in or around the office a good part of the next couple months. It would be nice to see a little less rain so the fishing could improve. For us, it is nice to see our northern grandchildren, clients and friends.

This morning I had the opportunity to watch, from a distance, the animal catcher at work. It turns out that while we have been at home in South Carolina, a family of skunks chased the old occupants from under the garden shed. They then took up occupancy. Watching the animal catcher trap and remove the 5 skunks was entertaining. We are glad to get rid of our new friends.

As July is now upon us, I hope you have an enjoyable and safe summer.

*Richard Moldenhauer*

Richard Moldenhauer

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## RECENT THOUGHTS ON SUCCESSION PLANNING

Statistics on the survival of small businesses at the death of the founder are troubling. While this is not news to most of us, the reasons should be explored.

1. The founder has spent all of their time working in the business and little or no time working on the business.
2. It is the founder's baby and only they can do everything important.
3. Must maintain control at all cost.
4. Procrastination until it is too late.
5. Nobody would want this business.
6. Buyers do not have adequate money to buy the business.
7. Illness or death occurs unexpectedly.
8. The prospective buyer changes his mind.
9. A child in line for succession decides they do not want the business.

There are other reasons, but the above list is fairly complete.

As I have worked with business owners, I have seen these and other reasons. However, if desired, there is almost always a way to sell a business. The solution is in the seller's control, but timing is a factor.

Years ago, I had a client who, along with his wife, ran a successful wholesale supply business. At the time, I was in my 30's and he was in his late 60's. When we got to the point of comfort in our process, I suggested he start looking for a successor. He agreed, but it was not the right time. Each year we'd discuss the increasing urgency (in my mind). Finally, in his mid-70's, he became ill and the urgency was transferred to him.

Instead of being able to strategize and search out the best option, he had little choice. He sold his business to an employee, but not one he liked. The price was less than half the value of the business.

What went wrong? The answer is obvious. In the end the owner "ate" half the purchase price because he procrastinated. The rest of the story is just as sad. The seller's family never received the full agreed on sale price. The moral of the story is, do not put off what you should do today.

## THINKING BIG IN SMALL BUSINESS

In the world of bigger businesses and banks, certain plans have been commonplace. These same plans are now being used with great results in smaller businesses. There are many aspects to this type of planning. Let me tackle just one in this article.

Qualified Retirement Plans and Social Security are both discriminatory. The higher your pre-retirement income, the lower the percentage of income you receive during retirement. This fact can be ignored, but the results are not good for the employee or the employer.

The original SERP Plans were called "deferred compensation plans" or "golden parachutes". Today, there are many more plans and plan names. They all solve problems. When properly designed, adapted and used, they are profitable for the business as well as beneficial for the key employees. The numbers are sometimes hard to believe, but they are real.

Why do banks have Board of Directors? The answer may be to advise the bank. That is only half the answer. The other half in the financial world is called "BOLI". Normally, each board member is insured for the benefit of the bank on whose board they sit. When these people pass away, the amount of tax-free income the bank receives is staggering.

The concept is valid and legal. Who wins? First, each board member receives income during his or her tenure. At death, the bank receives a tax-free windfall that goes to the bottom line.

These concepts can be adapted to most businesses. The owners and the advisors are just not thinking far enough down the road.

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## THE IMPORTANCE OF TOD & JTWRROS DESIGNATIONS

*A convenient move that could ward off probate on your accounts.*

TOD, JTWRROS – what do these obscure acronyms signify? They are shorthand for transfer on death and joint tenancy with right of survivorship – two designations that permit automatic transfer of bank or investment accounts from a deceased spouse to a surviving spouse.<sup>1</sup>

This automatic transfer of assets reflects a legal tenet called the right of survivorship – the idea that the surviving partner should be the default beneficiary of the account. In some states, a TOD or JTWRROS beneficiary designation is even allowed for real property.<sup>2</sup>

When an account or asset has a TOD or JTWRROS designation, the right of survivorship precedes any beneficiary designations made in a will or trust.<sup>3</sup>

There are advantages to having TOD and JTWRROS accounts – and disadvantages as well.

### TOD & JTWRROS accounts usually avoid probate.

As TOD and JTWRROS beneficiary designations define a direct route for account transfer, there is rarely any need for such assets to be probated. The involved financial institution has a contractual requirement (per the TOD or JTWRROS designation) to pay the balance of the account funds to the surviving partner.<sup>4</sup>

In unusual instances, an exception may apply: if the deceased account owner has outlived the designated TOD beneficiary or beneficiaries, then the account faces probate.<sup>5</sup>

### What happens if both owners of a JTWRROS account pass away at the same time?

In such cases, a TOD designation applies (for any named contingent beneficiary).<sup>4</sup>

To be technically clear, transfer on death signifies a route of asset transfer, while joint tenancy with right of survivorship signifies a form of asset ownership. In a variation on JTWRROS called tenants by entirety, both spouses are legally deemed as equal owners of the asset or account while living, with the asset or account eventually transferring to the longer-living spouse.<sup>4</sup>

### Does a TOD or JTWRROS designation remove an account from your taxable estate?

No. A TOD or JTWRROS designation makes those assets non-probate assets, and that may save your executor a little money and time – but it doesn't take them out of your gross taxable estate.

In fact, 100% of the value of an account with a TOD beneficiary designation will be included in your taxable estate. It varies for accounts titled as JTWRROS. If you hold the title to a JTWRROS account with your spouse, 50% of its value will be included in your taxable estate. If it is titled as JTWRROS with someone

besides your spouse, the entire value of the account may go into your taxable estate, unless the other owner has made contributions to the account.<sup>6</sup>

### How about capital gains?

JTWRROS accounts in common law states typically get a 50% step-up in basis upon the death of one owner. In community property states, the step-up is 100%.<sup>6</sup>

### Could gift tax become a concern?

Yes, if the other owner of a JTWRROS account is not your spouse. If you change the title on an account to permit JTWRROS, you are giving away a percentage of your assets; the non-spouse receives a gift from you. If the amount of the gift exceeds the annual gift tax exclusion, you will need to file a gift tax return for that year. If you retitle the account in the future, so that you are again the sole owner, that constitutes a gift to you on behalf of the former co-owner; they will need to file a gift tax return if the amount of the gift tops the annual exclusion.<sup>6</sup>

TOD & JTWRROS designations are designed to make account transfer easy. They simplify an element of estate strategy.

TOD or JTWRROS accounts are not cheap substitutes for wills or trusts. If you have multiple children and name one of them as the TOD beneficiary of an account, that child will get the entire account balance, and the other kids will get nothing. The TOD beneficiary can of course divvy up those assets equally among siblings, but in doing so, that TOD beneficiary may run afoul of the yearly gift tax exclusion.<sup>6</sup>

As you create your estate, respect the power of TOD & JTWRROS designations. Since they override any beneficiary designations made in wills and trusts, you want to double-check any will and trust(s) you have, to make sure that you aren't sending conflicting messages to your heirs.<sup>6</sup>

That aside, TOD & JTWRROS designations can represent a convenient way to arrange the smooth, orderly transfer of account balances when original account owners pass away.

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Citations.

1 - [finra.org/industry/terms-and-acronyms](http://finra.org/industry/terms-and-acronyms) [9/26/18]

2 - [investopedia.com/terms/j/jtwros.asp](http://investopedia.com/terms/j/jtwros.asp) [12/20/18]

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4 - [washingtonpost.com/business/2018/11/12/transfer-death-deed-may-be-good-instrument-leaving-your-home-your-child-beware-flaws/?noredirect=on&utm\\_term=.3162fd5503c9](http://washingtonpost.com/business/2018/11/12/transfer-death-deed-may-be-good-instrument-leaving-your-home-your-child-beware-flaws/?noredirect=on&utm_term=.3162fd5503c9) [11/12/18]

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## WISE DECISIONS WITH RETIREMENT IN MIND

*Certain financial & lifestyle choices may lead you toward a better future.*

### Some retirees succeed at realizing the life they want; others don't.

Fate aside, it isn't merely a matter of stock market performance or investment selection that makes the difference. There are certain dos and don'ts – some less apparent than others – that tend to encourage retirement happiness and comfort.

### Retire financially literate.

Some retirees don't know how much they don't know. They end their careers with inadequate financial knowledge, and yet, feel they can plan retirement on their own. They mistake retirement income planning for the whole of retirement planning, and gloss over longevity risk, risks to their estate, and potential health care expenses. The more you know, the more your retirement readiness improves.

### Retire debt free – or close to debt free.

Who wants to retire with 10 years of mortgage payments ahead or a couple of car loans to pay off? Even if your retirement savings are substantial, what will big debts do to your retirement morale and the possibilities on your retirement horizon? On that note, refrain from loaning money to family members and friends who seem quite capable of standing on their own two feet.<sup>1</sup>

If the thought of using some of your retirement money to pay outstanding debts hits you, set that thought aside. You have dedicated that money to your future, not to bill paying. On second or third thought, other sources for the cash may be apparent.

### Retire with purpose.

There's a difference between retiring and quitting. Some people can't wait to quit their job at 62 or 65. If only they could escape and just relax and do nothing for a few years – wouldn't that be a nice reward? Relaxation can lead to inertia, however – and inertia can lead to restlessness, even depression. You want to retire to a dream, not away from a problem.

A retirement dream can become even more captivating when it is shared. Spouses who retire with a shared dream or with utmost respect for each other's dreams are in a good place.

The bottom line? Retirees who know what they want to do – and go out and do it – are positively contributing to their mental health and possibly their physical health as well. If they do something that is not only vital to them, but important to others, their community can benefit as well.

### Retire healthy.

Smoking, drinking, overeating, a dearth of physical activity – all these can take a toll on your capacity to live life fully and enjoy retirement. It is never too late to quit smoking, stop drinking, or slim down.

### Retire in a community where you feel at home.

It could be where you live now; it could be a place that is hundreds or thousands of miles away, where the scenery and people are uplifting. It could be the place where your children live. If you find yourself lonely in retirement, then look for ways to connect with people who share your experiences, interests, and passions; those who encourage you and welcome you. This social interaction is one of the great, intangible retirement benefits.

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Citations.

1 - fool.com/retirement/2019/03/24/3-things-you-should-do-in-your-40s-to-prepare-for.aspx [3/24/19]



## UPCOMING EVENTS:

**We will be taking a break from doing our monthly seminars during the months of June, July and August and resume our seminars in September. Have a safe and enjoyable summer!**

Periodically visit our website at [www.moldenhauerassociates.com](http://www.moldenhauerassociates.com) or call our office to get a listing of upcoming seminars.

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