

# Advisor Webinar Series

September 28, 2022

"Pre-Sale Techniques for Investors and  
Business Owners"

Presented by James M. Duggan, MBA, JD  
DUGGAN BERTSCH LLC

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# Pre-Sale Techniques for Investors and Business Owners

## Webinar for Professional Advisors

### Program overview:

Preparation for clients who hope to substantially gain from the sale of a closely held business or highly appreciating asset is critical and should be thoughtfully pursued well in advance of the sale to achieve maximum benefits. In this one-hour webinar, Jim Duggan will survey pre-sale techniques advisors can use to maximize sale proceeds and help their clients receive those proceeds in an optimal, long-term wealth management structure, not only to benefit them and their descendants, but also to:

- Maintain their privacy;
- Protect their assets;
- Maximize the value of the asset being sold;
- Minimize income and estate tax; and
- Prepare for successful transition of their business.



**James M. Duggan,**  
**MBA, JD**

**Date: Wednesday, September 28, 2022**

**Time: 3:00 - 4:00 p.m. Eastern**

(2:00 - 3:00 p.m. Central; 1:00 - 2:00 p.m. Mountain; Noon - 1:00 p.m. Pacific)

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**James M. Duggan** is a founding principal of DUGGAN BERTSCH, LLC, a Chicago-based business, tax, estate, and wealth planning firm comprised of attorneys and accountants. Jim's practice has concentrated principally on business and corporate law and estate and wealth planning, primarily as they relate to closely held business interests and high net worth families. Jim's experience in the structuring and implementation of Family Offices, sophisticated tax planning, and asset protection planning strategies is nationally recognized, as is his role in the firm's development of a leading multidisciplinary planning protocol. In addition to giving frequent lectures and authoring articles in his areas of concentration, Jim also serves as a director on numerous for-profit and not-for-profit organizations. Jim's educational background includes attaining a Bachelor of Science in marketing from the College of Commerce and Business Administration at the University of Illinois at Urbana-Champaign (magna cum laude), a Masters in Business Administration in finance from the DePaul University Graduate School of Business (summa cum laude), and a Juris Doctor from the DePaul University College of Law, where he was awarded positions on both the DePaul Law Review and DePaul Business Law Journal.

**Accountants** can earn CPE credit by pre-registering using the link on the following page and responding to the polling questions that will be asked during the program. This course qualifies with NASBA for 1.0 hour of CPE credit in the field of study: Taxes.

# Pre-Sale Techniques for Investors and Business Owners

With James M. Duggan, MBA, JD

**To register for and attend this session, use the link below:**

[https://nylife.zoom.us/webinar/register/WN\\_5Fkljv\\_gQf6HRTfyF80Fjw](https://nylife.zoom.us/webinar/register/WN_5Fkljv_gQf6HRTfyF80Fjw)

**To ensure the best possible webinar experience, test your connection here:** <https://nylife.zoom.us/test>

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**Technical support:** If you experience issues registering or attending, please visit <https://support.zoom.us>

**Mobile access:** Zoom runs on tablets and smartphones. Download the application from the App Store of your choice.



**Learning objectives:** Upon completion of this program, participants will understand how to achieve the maximum benefits for their clients who want to sell a closely held business or highly appreciating asset, specifically how to maximize sale proceeds and prepare for the receipt of such proceeds in an optimal, long-term wealth management structure, maintain client privacy, protect client assets, minimize estate and income taxes for the client, maximize the value of the asset being sold, and facilitate effective business succession.

**Who should attend:** This presentation is prepared for the general information and education of professional advisors who work with agents of New York Life Insurance Company. It is for educational purposes only and not intended for use with the general public.

**Program level:** Advanced.

**Prerequisites:** Practicing accountants and attorneys with significant exposure to the subject.

**Advanced preparation:** None required.

**Delivery method:** Group Internet based (GIB).

**Recommended CPE credit and field of study:** Participants will earn 1.0 CPE credits in the category "Taxes." In order to be awarded the full credits, participants must respond to the polling questions asked during the program, and complete and return the appropriate CE forms.

**Registration requirements:** To register for this program, go to [https://nylife.zoom.us/webinar/register/WN\\_5Fkljv\\_gQf6HRTfyF80Fjw](https://nylife.zoom.us/webinar/register/WN_5Fkljv_gQf6HRTfyF80Fjw).

**Program refund policy:** There is no fee for attending this program.

**Complaint resolution policy:** For more information regarding administrative policies such as complaint, refund, and program cancellation, please contact the New York Life Insurance Company representative at 972-720-6704.

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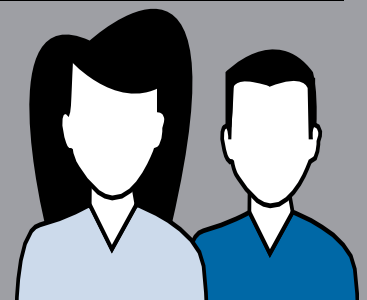
**YES**

**NO**

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1

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## Pre-Sale Techniques for Investors and Business Owners


New York Life Advisor Webinar  
Featuring James M. Duggan, MBA, JD



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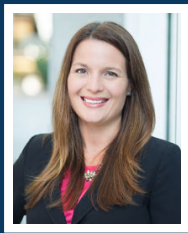
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## Your New York Life host

Sarah Frances Trampe, MBA  
Corporate Vice President  
The Nautilus Group®

Download slides, flyer, and CE instructions:  
[NYLAdvisors.com/educational-resources/](https://nyladvisors.com/educational-resources/)

Zoom support:  
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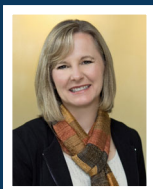


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## Polling Question (1 of 4)



## Answering your questions:



Michelle M. Kenyon, JD, CLU®  
Corporate Vice President  
The Nautilus Group®



Chad Whitfield, JD  
Corporate Vice President  
The Nautilus Group®



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## Our guest speaker:



James M. Duggan, MBA, JD  
Founding Principal  
DUGGAN BERTSCH, LLC



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## Critical Objectives

The most important – and overlooked – objectives for the private business owner:

- Privacy
- Asset Protection
- Value Maximization
- Income Tax Minimization
- Estate Tax Minimization
- Succession



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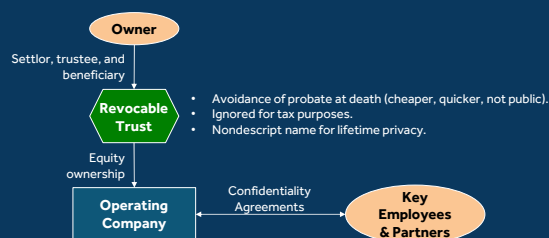
## Maintaining Privacy

- A private business should be just that ... **private**.
- Goal is to achieve privacy:
  - During lifetime -
    - Confidentiality agreements (enforceable & enforced).
    - Nondisrupt ownership of LLC or trust.
  - At death -
    - Revocable trust to avoid probate.
    - Combined with LLC holding structure?



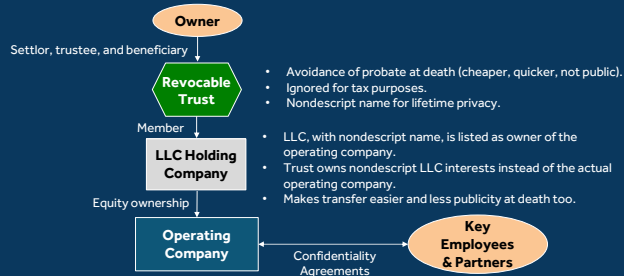
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## Privacy Schematic #1



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## Privacy Schematic #2



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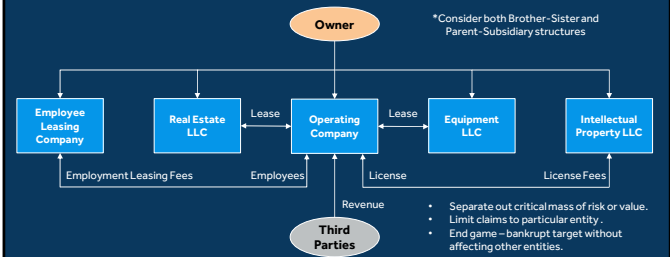
## Asset Protection

- Protect what your client has built!
- Four protection considerations:
  1. Protect assets from company creditors – use an entity!
  2. Protect the company assets from company creditors – divide and conquer.
  3. Protect the company assets from personal creditors – use trusts and LLCs.
  4. Protect proceeds upon liquidation event.



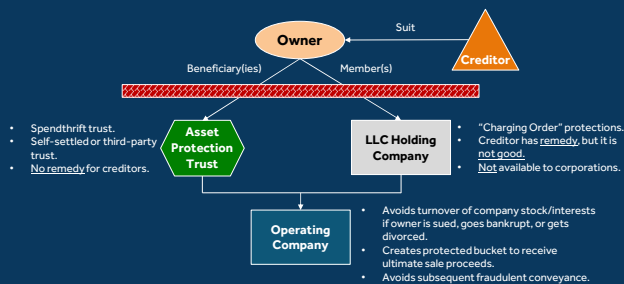
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## Asset Protection Schematic #1



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## Asset Protection Schematic #2



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## Polling Question (2 of 4)



## Value Maximization

- Selling a business is like selling a house – clean it up!
- Understand due diligence items – use as framework.
- Maintain proper corporate records.
- Hire a valuation expert (through attorney).
- Consult with investment bankers early and often.



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## Income Tax Minimization

- Income tax minimization is fact-specific and depends on the tax risk profile of the particular client. The tail should not wag the dog, but due consideration should be given to all tax minimization opportunities to maximize retained capital and value.



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# Income Tax Minimization Techniques for Clients

Opportunities include but are not limited to the following:

1. Section 1244 Stock – allows for ordinary loss if corporation fails.
2. Section 1202 Stock – allows for potential 100% exclusion of capital gains tax.
3. ESOPs for C Corps – allows for deduction of dividends to ESOP and tax-free rollover of sale proceeds (Section 1042).
4. ESOPs for S Corps – allows for tax-free flow-through of profits, creating a tax-exempt company.
5. Self-Directed IRA as Owner – establishes a tax-deferred wrapper around the ownership interests.



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# Income Tax Minimization Techniques for Clients (continued)

6. **IC-DISC** – for manufacturers who export, convert ordinary income into qualified dividends on allowable sales commissions. Case law actually permits an IC-DISC to be owned by self-directed Roth IRAs for further tax benefit.
7. **Defined Benefit Plan** – defined benefit plans, such as a cash balance plan, allow for disproportionately high allocations/deductions for older owners/employees.
8. **Stock Sale vs. Asset Sale** – try to sell stock and not assets to ensure full capital gain treatment instead of ordinary income tax upon sale.



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# Income Tax Minimization Techniques for Clients (continued)

9. State Tax Arbitrage – break up business into components and isolate income generators in low/no-tax states.
10. Changing Residency Pre-Sale – become a bona fide resident of a low- or no-tax state, U.S. Territory, or foreign jurisdiction to minimize, or potentially avoid, both state and federal tax.
11. Charitable Remainder Trust – contributing C Corp stock to a CRT before sale to get up-front charitable deduction and tax-free diversification upon sale.
12. Others as may apply based on facts.



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Polling  
Question  
(3 of 4)



# Estate Tax Minimization

- Create a wealth transfer structure not just prior to sale, but prior to run-up for maximum effect.
- Key strategies to remove value from estate:
  1. Gifting – transfer of value and appreciation.
  2. Freezing – transfer of appreciation only.
  3. Diverting acquisition opportunity – transfer opportunity before there is any value.



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The diagram illustrates a strategy for transferring business interests and appreciation. It shows the flow from an Owner to a Revocable Trust, then to a Gift Trust, and finally to an LLC Holding Company and an Operating Company.

**Owner (Settlor, trustee, and beneficiary):**

- Revocable
- Avoid probate (privacy)

**Revocable Trust:**

- X% (Member(s))

**Gift Trust:**

- Discretionary beneficiaries
- Irrevocable trust
- Asset protection
- HEMS = best interests
- Avoid estate & GST tax
- Dynastic trust
- Spousal lifetime access trust

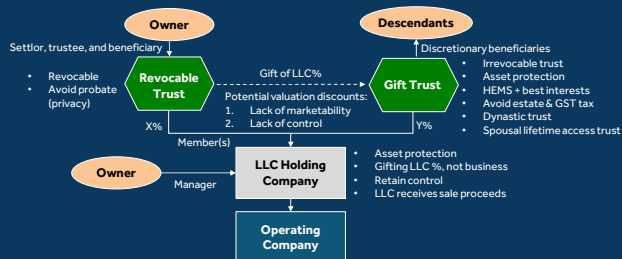
**Transfers:**

- Gift of LLC%
- Potential valuation discounts:
  1. Lack of marketability
  2. Lack of control
- Y% (Manager)

**LLC Holding Company:**

- Asset protection
- Gifting LLC %, not business
- Retain control
- LLC receives sale proceeds

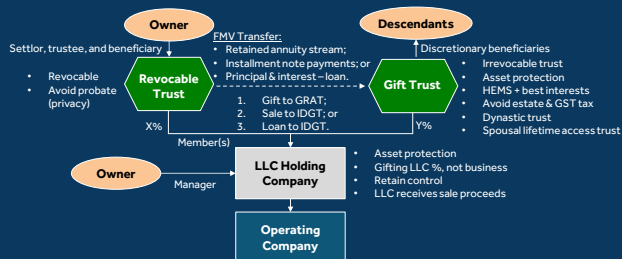
**Operating Company:**



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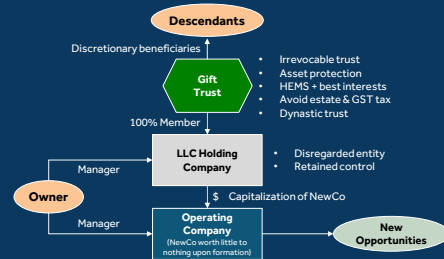


## Freezing the Business Interests Transfer of Appreciation



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## Diverting Acquisition Opportunity “Creation” of Value



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## Polling Question (4 of 4)



## Business Succession

Proper succession preparation contemplates multiple aspects:

1. Succession of the business itself.
  - Contingencies; buyer selections.
2. Succession of the employees.
  - Protecting/elevating roles.
3. Succession of the wealth created.
  - Family office.



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## Timing for Pre-Sale Preparation

- Don't wait!
  - The sooner, the better – at least 1 year is preferred.
- Lead a coordinated advisory team!
- Revisit at least annually as client's circumstances change.



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## Questions



James M. Duggan, MBA, JD  
Founding Principal  
DUGGAN BERTSCH, LLC



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**2022 Educational Events  
For Advisors**  
*Save the dates!*

**Advisor Symposium**  
Wednesday, Nov. 9, 1 – 4:30 p.m. Eastern

Featuring Robert Keebler, Christopher Hoyt, Greg Holmgren, and Matt Pate

**Advisor Webinar Series**  
Wednesday, Nov. 30, 3 – 4 p.m. Eastern

Featuring Professor Christopher Hoyt

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**Thank you.**

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