

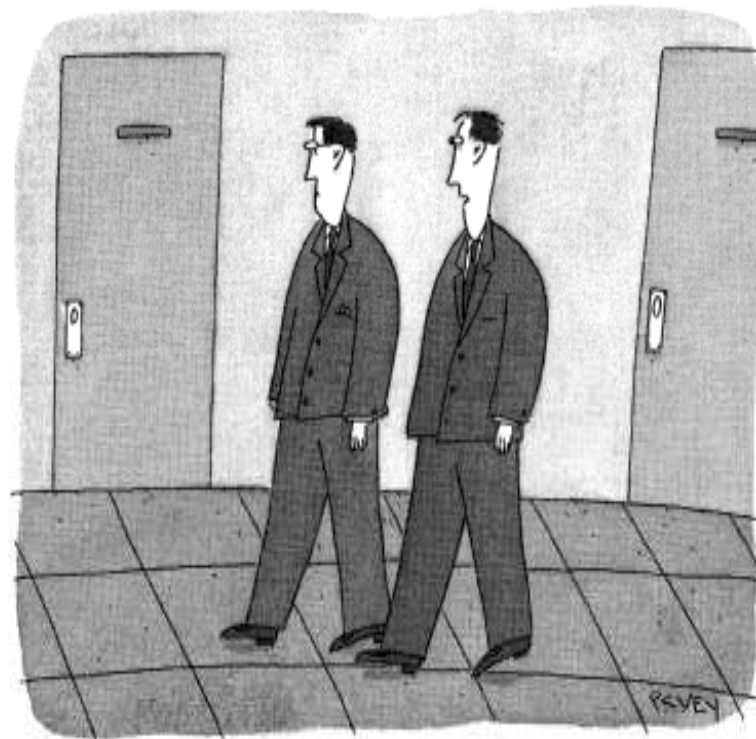
Tax Planning for the Owner – Manager

Richard S. Niedermayer

May 13, 2009

STEWART MCKELVEY

When results count.



"What you lack in business savvy you more than make up for in owning the company."

STEWART MCKELVEY

smss.com

Charlottetown

Fredericton

Halifax

Moncton

Saint John

St. John's

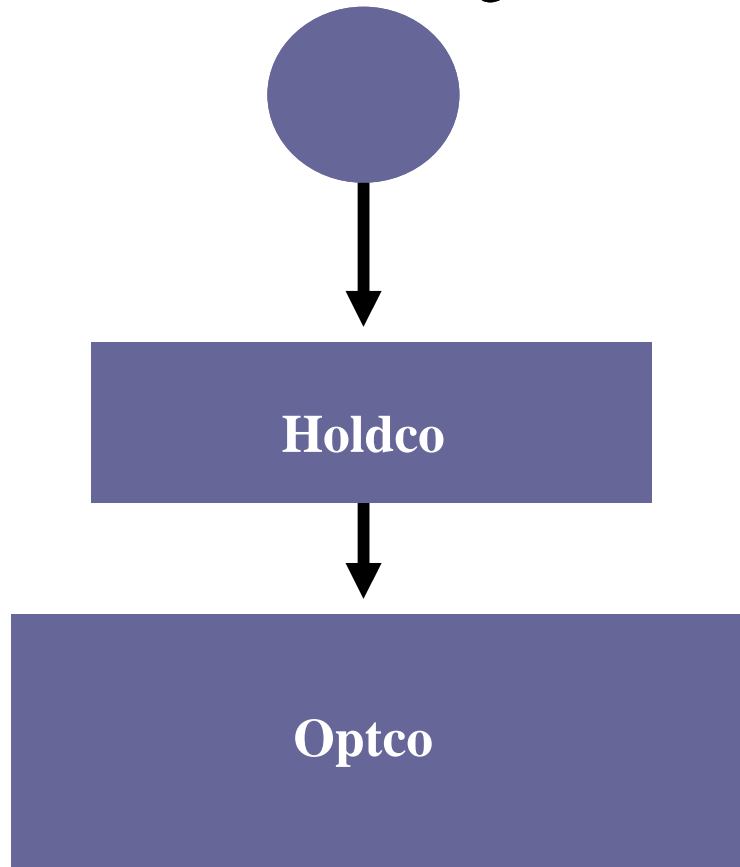
Life Cycle of a Business

- Create business
- Grow business
- Organize assets
- Restructure for efficiency
- Sale or inter-generational transfer
- Structure again to maximize value



Traditional Structure

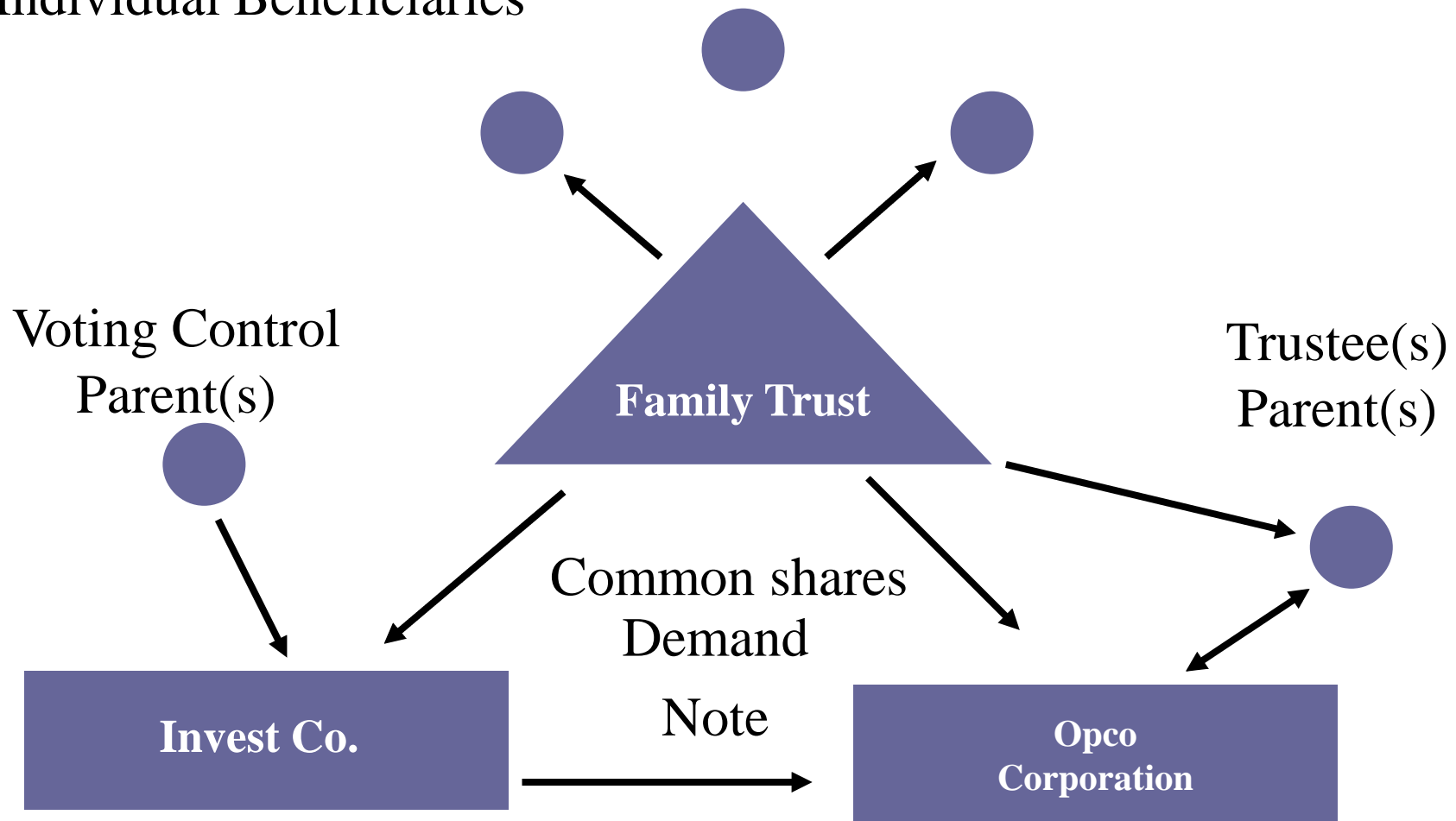
Owner/Manager



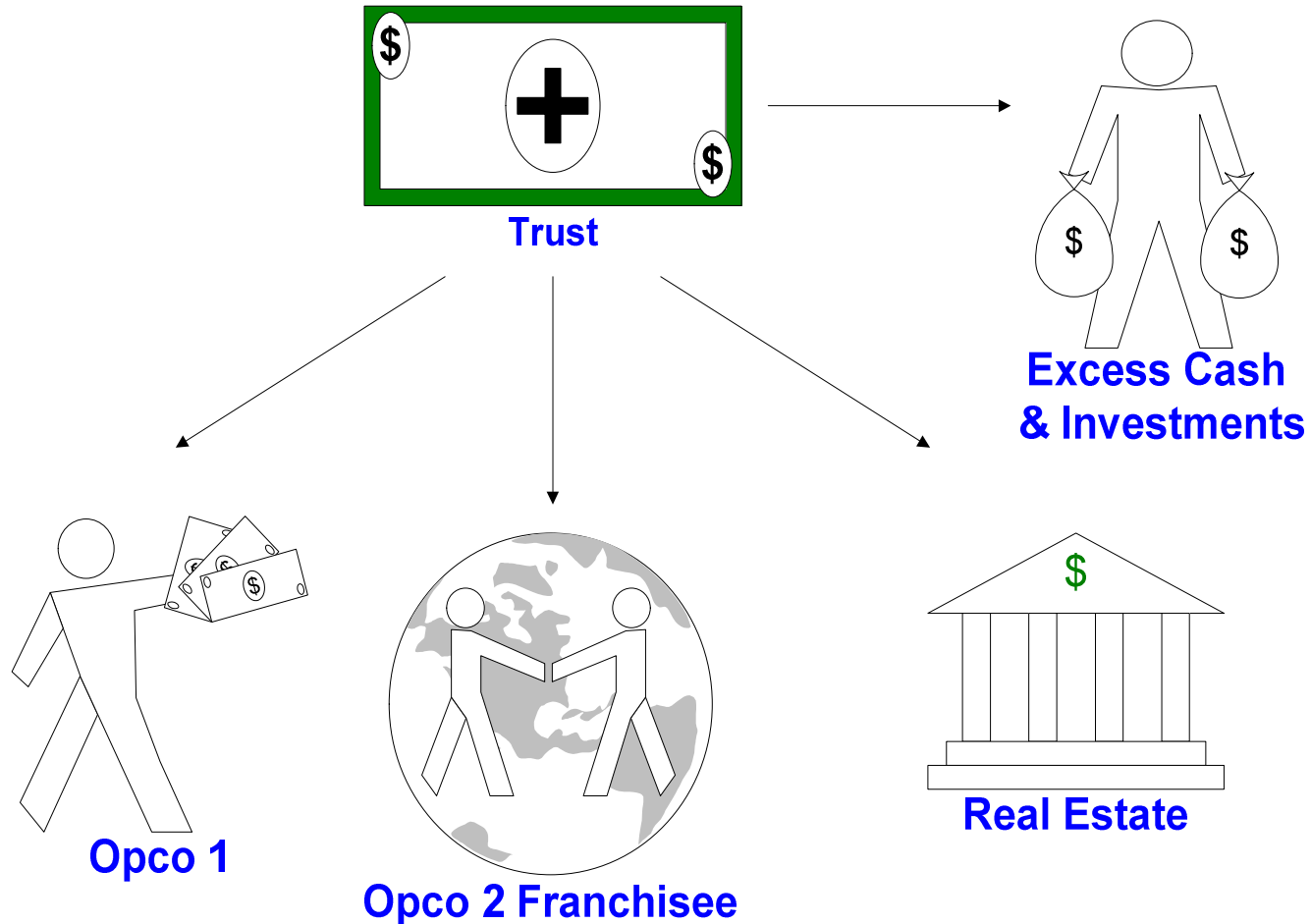
- Company is generating excess cash flow...
- Corporation owns business, investments and real property
- If left in the company
 - Exposed to creditors
 - Qualification for Exemption??

Combined Structure

Individual Beneficiaries



Structure – Separate Corporations



Multiplication of the ECGE

Multiply access to \$750,000 ECGE

Taxable gain	\$	3,000,000	\$	(720,000)	
Fred		(750,000)			180,000
Michelle		(750,000)			180,000
Joe		(750,000)			180,000
Hillary		(750,000)			180,000
	\$	<u> </u>		<u> </u>	
		Nil		Nil	

If no exemption available

Multiplication of the ECGE (cont'd.)

Multiply access to \$750,000 ECGE

	Exemptions		Cash	
Taxable gain	\$	3,000,000	\$	3,000,000
Fred		(750,000)		(1,875,000)
Michelle		(750,000)		(375,000)
Joe		(750,000)		(375,000)
Hillary		<u>(750,000)</u>		<u>(375,000)</u>
	\$	<u>Nil</u>	\$	<u>Nil</u>

Full exemption available

\$750 K Capital Gains Exemption

- Requirements
 - Shares of small business corporation
 - 90% active assets at transaction date
 - 24-month holding period test for shares
 - 24-month qualifying asset test
 - 50% active assets (average over period)

\$750 K Capital Gains Exemption (cont'd.)

- **May wish to crystallize today**
 - Ensure company qualifies
 - However, may sell shares of another company
- **May still wish to crystallize prior to sale of assets**
 - May be last chance
 - May be of limited benefit if asset strip not available
 - Must be done before sale of assets



“Well, we’ve licked taxes—that just leaves death.”

STEWART MCKELVEY

smss.com

Charlottetown

Fredericton

Halifax

Moncton

Saint John

St. John's

What is a Family Trust

*Creates separation of legal ownership from
beneficial ownership*

Trustees

Beneficiaries

Owner

Spouse

Children

Others?

Trust document



STEWART MCKELVEY

smss.com

Charlottetown

Fredericton

Halifax

Moncton

Saint John

St. John's

Family Trust – Non-Tax Reasons

- Control and decision making
 - Provides hindsight
 - Issues related to heirs
 - In-laws
- Trust provides parent (vendor) with greater control
- Trust prevents child (purchaser) from having control
- Creditor protection

Family Trust – Tax Reasons

Capital splitting

- Allows growth to accrue to other family members
- Multiplication of the enhanced capital gains exemption
- Ability to transition wealth to family later in a manner chosen by the owner/manager

Income splitting

- Dividend payments to lower marginal tax rate shareholders
- Watch income attribution and kiddie tax

Legal Considerations

- Control/ownership vs. economic interests
- Shareholders' agreement

Control/Ownership vs. Economic Interests

- Trusts – trustee vs. beneficiaries
- Share terms for corporations
- Will – executor vs. beneficiaries
- Property and financial attorney

Shareholders' Agreements

- Governance of the business
- Shareholder contributions
- Restrictions on share transfers
- Rights of first refusal
- Sales on certain triggering events
- Sales on notice
- Confidentiality provisions
- Dispute resolution
- N.B. Greatly preferable to conclude shareholders' agreement before shares are issued to the other party

Thank You!

STEWART MCKELVEY

smss.com

Charlottetown

Fredericton

Halifax

Moncton

Saint John

St. John's

Contact Information

Richard S. Niedermayer

Partner

Stewart McKelvey

900-1959 Upper Water Street

PO Box 997

Halifax NS B3J 2X2

Direct 902.420.3339

Fax 902.420.1417

Email RNiedermayer@smss.com

Website www.smss.com

STEWART MCKELVEY

smss.com

Charlottetown

Fredericton

Halifax

Moncton

Saint John

St. John's