

## Rewarding An Employee With Corporate Stock

Banker and philanthropist Andrew Mellon once remarked “No good deed goes unpunished.” Consider a business owner who wants to compensate a hard working and loyal employee by awarding the employee stock in the company. While such a nice gesture may not seem risky, several problems can potentially arise if the company is not careful.



For starters, once an employee becomes a shareholder his relationship with the company changes dramatically. As a minority shareholder, the employee has substantially more rights. Courts impose heightened or fiduciary duties not only upon the company, but its officers and controlling shareholders. Courts have reasoned that this is necessary in order to “protect” the rights of minority shareholders. This can become problematic if the company’s relationship with the employee later sours. What happens, for instance, if after being awarded the stock, the employee ceases being productive and loyal, and even becomes a detriment to the company? Some courts have declared that as a minority shareholder, the employee has a right to continued employment as a “fair return” on his or her “investment.” This means that terminating the employment of a poorly performing minority shareholder can be both difficult and costly.

Other problems can arise. As a shareholder, the employee can demand to inspect all corporate books and records,

including payroll records. He can even question the reasonableness of the compensation paid to other employees, as well as the compensation paid to the founder or founders of the company. This frequently occurs if the employee complains that the compensation paid to the controlling shareholders are disguised profit distributions. And, as a shareholder, the employee is entitled to receive his or her pro rata share of any and all profit distributions or dividends paid to the other shareholders. This is so even if the employee is underperforming.

Unfortunately, these headaches do not necessarily end if and/or when the shareholder’s employment terminates. In some cases, the employee may lose his job, yet remain a shareholder. If this occurs, the former employee is still entitled to inspect the corporate books and records, can still question the compensation of others, and remains entitled to a pro rata share of any and all profit distributions paid to any other shareholders. And if not agreed to in advance, difficulties can arise as to how the stock should be valued.

Because courts have recognized that minority shareholders have substantial rights, a disgruntled shareholder can make life very aggravating and costly to the company, its officers, directors, and majority shareholders. Yet these problems are avoidable. By carefully drafting agreements at the time the employee is offered stock, business owners can issue shares to a deserving employee of the company without later being “punished” for this good deed. We can help business owners achieve this result.

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## WHV Practice Area Spotlight

### General Corporate

Our business lawyers are trusted legal advisors to privately held companies. Our corporate attorneys have the experience and the knowledge to counsel and advise clients about their day-to-day legal concerns and issues.

Timely counsel and advice are provided on a wide array of business matters, including the following:

- Business expansions, start-up of new ventures and/or operations.
- Equity and debt financing.
- Securitizations.
- Board of Director representation.
- Strategic business and growth planning.
- Corporate control and takeover concerns.
- Disclosure matters.
- Risk management and assessment.
- Corporate governance.
- Purchasing and vendor concerns.
- Customer relations.
- Employment matters.
- Distributor and sales representative matters.
- Regulatory compliance matters.

Please visit [www.wegmanlaw.com](http://www.wegmanlaw.com) for more information.

## What Is Medicaid Planning?

The long held misconception that Medicare covers the costs of long term nursing home care has been eroded in recent years due to the federal and state government budgetary concerns over the costs of health care. Medicare is health-care coverage to which persons over age 65, and certain disabled persons, are entitled. Medicaid differs from Medicare as it is a “means tested” public assistance program providing health care coverage for the “aged, blind and disabled.” Under a “means tested” program, in order to qualify for the program benefits, a person must meet certain asset and income levels determined by the government.



Medicare will pay for the first 100 days in a nursing home, but only if the care rendered is “skilled care” and the confinement in the nursing home was preceded by a three day hospital stay. “Skilled care” is defined as receiving rehabilitation for an illness or injury that results in increased improvement. Coverage for the 100 days is not guaranteed. If a person plateaus, or no longer shows signs of improvement, Medicare terminates payment.

Medicaid planning is a version of asset protection that will enable a person to shelter or save assets and still qualify for governmental assistance in order to pay for long term nursing care. Medicaid planning is similar to estate planning in that it requires a detailed review of an applicant’s financial portfolio, existing legal documents, objectives and concerns for their assets and the tolerance for the change to those assets. Medicaid planning goes beyond the realm of estate

planning by using planning techniques to reduce the applicant’s assets for qualification purposes. As with all things involved with the Medicaid program, it is a form of counter-intuitive thinking, and it’s only the beginning of the process.

In the initial assessment of a person’s assets, we first look to see what assets are considered “exempt” or non-countable toward their total amount allowed for qualification. Exempt assets differ depending upon whether a person is single or married. For both single and married persons, exempt assets include life insurance policies with a face value of \$1,500, irrevocable funeral arrangements, burial vaults or lots and headstones. Additional exempt assets for married couples include one home, if owned by the married couple (and not owned by a trust) and one vehicle, regardless of value. For a single person, the home is only exempt, or non-countable, for a period of thirteen months. After that time, the value of the home, as determined by the County Auditor, is included toward the total amount of assets one can own in order to qualify.

In order to qualify for Medicaid benefits, a single person’s non-exempt or countable assets are limited to \$1,500.00 and married couples are subject to a minimum of \$21,912.00, and a maximum of \$109,560.00. These marital minimum and maximum limits are subject to an additional level of qualification; the community spouse (or spouse that is not institutionalized) is able to retain “the lesser of the designated amount or one half of the couple’s assets.” For example, if a married couple has a total of \$200,000 in countable assets, the community spouse can retain \$100,000 and the institutionalized spouse \$1,500, with \$98,500.00 in assets that will be required to be reduced in order to obtain Medicaid qualification.

The key to Medicaid planning is how to reduce the assets over the limitation while complying with the convoluted rules and regulations of this benefit. An

Elder Law attorney versed in this area is crucial to the planning process.

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## WHV Notable News and Events

*Peter A. Hessler, chair of the firm’s Litigation Group, and associate Angela M. Lavin, with the assistance of litigation support manager Jason M. Lowbridge, successfully defended our clients in the Cuyahoga County Common Pleas Court in which the plaintiff sought damages under various tort claims, including malpractice. Plaintiff claimed that she suffered injuries and damages following elective cosmetic surgery. She further claimed that she did not provide informed consent to the procedure alleging that the risks of the surgery were not adequately disclosed. The Honorable Linda Rocker granted a directed verdict in our clients’ favor dismissing several of the claims and the jury returned a defense verdict on the remaining claims.*

*On June 20, 2011 the National Board of Trial Advocacy (NBTA) advised that Christopher A. Holecek, a partner in WHV’s Product Liability Defense, Litigation and E-Discovery & Technology practice groups has met all their requirements, passed the examination and has been approved as a Board Certified Civil Trial Specialist.*

*Renee L. Miller, a paralegal in the firm’s Estate Planning group, has successfully completed the Ohio State Bar Association’s Paralegal Certification process.*

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