UNIVERSITY OF Cincinnati
College of Business

The Goering Center
FAMILY BUSINESS REPORT

Solutions, technologies and shared experiences unique to the family or privately held business.

DIRECTOR'S COLUMN:

Family Business Compensation:
"How to Pay or Not to Pay"...That is the Question

W. Kent Lutz, Director

Please Consider Becoming a Member of the Goering Center... We Need Your Support

If you were to ask several members of a family employed by their family business how they were paid, what kind of a response do you think you would get? Would it be something like, "We all receive whatever the market rate is for the job we perform," or "Our business only pays family members for the actual job, not the person, because he or she is a family member." If you were to probe a little further with the individual family members into what they actually were paid, you might uncover a different answer. It might be that one son actually received $80,000 compared with $40,000 earned by others in the same job. It could be explained by the father that his son does a good job and after all "he is family." The second son might have received a mid-year raise because his wife gave birth to their first child and she had to quit her full-time job. After all, the father felt he had to make up for their lost income. The third child employed in the business, a daughter, also received a mid-year raise, because, according to her father, she, and her closest in age sibling were always very competitive, and "after all, since he received a mid-year raise, she needs to get one also, so their pay is equal." Does this sound all too familiar? Well, I'm sure it does, because compensation tends to be at the heart of more family business questions than any other issue, except succession.

Compensation is an immediate and tangible symbol of the family business's multifaceted relationship with the family members and others it employs. It is very easy to confuse a paycheck with a return on ownership, parental concern, or ways of achieving emotional goals. This confusion can send a mixed message that can impact both the business and the family. There are constant challenges on how to pay family members and how to distinguish their role as employees, shareholders, and loved ones. The more systematic a compensation plan is that encourages professional growth, the more value it adds to the strategic direction of the business and discards the notion of paying for other emotional purposes.

There are a number of common causes for family business compensation problems. The list may be long, but here are ten that seem to stand out:

1) Confusing roles between job responsibilities and ownership.
2) Using compensation to achieve tax savings.
3) Using compensation to maintain parental control.
4) Using compensation to resolve emotional issues.
5) Preserving secrecy at all costs.
6) Confusing business and personal funds.
7) Taking relationships for granted.
8) Using salary substitutes such as titles or perks to appease unhappy family members.
9) Paying everyone too little or too much.
10) Using compensation to smooth the ups and downs of the business cycle.

No foolproof compensation policy exists to satisfy every unique need that families in business have, but there are steps that can be taken to develop a good compensation plan that keeps everyone involved in the business working for what is best for all.

Developing a family philosophy for compensation is the summation of the values, goals, and principles held by the family, and represent the guiding principles that lead to a sound policy. For example, does the company focus on creating shareholder value? If they do, this philosophy emphasizes profit maximization which translates into hiring and operating at the lowest possible costs, and charging the highest prices the market will bear. On the other hand, a business's philosophy may be to create the best possible opportunities and environment for all employees, which translates into more attractive pay, benefits, and perks in order to encourage high performance and improved productivity. Still other businesses may put service to the customer as first and foremost, which results in attracting customers by offering low priced, high quality products or services, so that such a strategy will allow the business to grow, create new jobs, and earn higher returns for the shareholders. No two businesses will adopt the same values and guiding principles, but one thing is certain, when developing a compensation policy, ideally it should be consistent and market driven.

The following steps may be helpful in building a quality compensation plan:
1) Develop a family philosophy to

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GOERING CENTER

Importance of Shareholder Agreements in Succession Planning

Deloitte & Touche

Christopher J. Kramer, Deloitte & Touche

Suppose you own a successful corporation with a close friend whose spouse is also involved in the business. Although you have a decent working relationship with your friend's spouse, he or she has never demonstrated an ability to make sound business decisions. You can imagine what might happen if your friend's stock ownership is transferred to his or her spouse in the event of your friend's death. Would it be possible for you to successfully continue running the business with your new 50-percent partner?

Now suppose you own a minority interest in a closely held manufacturing business. The value of your interest in that business is significant, and you are reliant on that value to ultimately fund your retirement and provide an inheritance to your heirs. Since the company's stock is not publicly traded, what happens if upon your retirement, no one purchases your stock? Consider as well what may happen to your retirement and estate plans should you receive an offer to buy your stock at a price far below what you feel it is worth.

These scenarios occur with frequency. There is, however, a relatively easy remedy: shareholder agreements.

Shareholder agreements -- also known as buy-sell agreements -- are contracts drawn by legal counsel that establish a procedure for buying out an ownership interest in a closely-held business, triggered by a specific event. The events that are typically considered when designing shareholder agreements are death, retirement or disability of a shareholder.

Shareholder agreements, when properly designed and implemented, benefit the business and the shareholders in many ways. Since closely held businesses are not publicly traded, shareholder agreements create a guaranteed market for that closely held stock. A valuation method or a value per share is also established. In addition, shareholder agreements lend certainty to the disposition of the business, eliminate the risk of unwanted ownership, and perhaps most importantly, create a blueprint for stock ownership that avoids a significant disruption in the management of the business during what typically is a very chaotic period.

Shareholder agreements can be structured in several ways:

1. Stock redemption agreement: an agreement between the business and the individual owner.
2. Cross purchase agreement: an agreement between the individual owners.
3. Third-party buyout agreement: an agreement between the individual owners and key outside individuals.
4. Hybrid agreement: a combination of the above.

Key to any of these types of agreements is the stock buyout price. But that price is often difficult to determine. There are five options from which to choose, and each has its advantages and disadvantages:

1. Fixed Price Per Share
2. Book Value Per Share
3. Capitalization of Earnings
4. Combination Book Value with Capitalization of Earnings
5. Appraisal

If a fixed price dollar value per share is used, the established price may become quickly outdated. A mechanism should exist to use an alternative valuation method if the agreed price is not current.

The book value per share determined with reference to financial accounting records also might not be satisfactory, since it might not take into account going-concern value and asset appreciation. The book value per share method may be adjusted by segregating the items which can be separately valued.

The capitalization of earnings approach averages earnings over a specified period of time, then applies a multiplier established by the anticipated return on investment. If this method is used, consider the business may not have had a successive number of "normal" years. Also consider three factors for the capitalization method: the period over which earnings are to be computed; the appropriate capitalization rate; and c) the definition of "earnings."

If an appraisal approach is used, consider a mechanism for identifying the independent appraiser, determining who should participate in the election process, and deciding how frequently appraisals should be conducted. Also consider the specific valuation techniques that should be applied in determining the value of the entity or specific assets. If the agreement calls for the use of more than one appraiser, determine how disputes on value may be resolved. The appraisal approach is typically the more expensive option and a determination of who will bear the cost of the appraisal should be made prior to drafting the agreement.

Regardless of the valuation method used, the stock buyout is typically self-funded by the corporation or individuals, or may be funded with insurance proceeds.

For any business, a change in ownership is inevitable. A well constructed shareholder agreement can limit the disruption that accompanies such a change, helping the business, its customers and employees adapt.

Shareholder agreements...are contracts drawn by legal counsel that establish a procedure for buying out an ownership interest in a closely-held business,

The Goering Center Calendar of Events

April 2004

20th Next Generation Institute Steering Committee Meeting

27th Member Breakfast Series – Norwood Quality Inn – 7:30 a.m. Tim Shepelak, The Growth Coach with Tim Neihaus, third generation owner of the Miami Corporation "Are You Facing Reality"

30th Family Business of the Year Nominations Closed

May 2004

11th Next Generation Institute – Session 7 – 7:30 a.m. Topic: Estate Planning

18th Next Generation Institute Steering Committee Meeting

25th Family Business Executive Luncheon Series – Norwood Quality Inn – 11:30 a.m. Mike LaRosa and T. D. Hughes, LaRosa's, Inc.

June 2004

4th Board of Advisors Meeting

8th Next Generation Institute Retreat and Graduation

22nd Member Breakfast Series – Norwood Quality Inn – 7:30 a.m. Paul Bransford and Lynn Mangan Generational Transition

30th Family Business of the Year Applications Due

27th Family Business Executive Luncheon Series – Norwood Quality Inn – 11:30 a.m. Speaker to be announced

August 2004

24th Family Business of the Year Event Cincinnati Music Hall 6:00 – 9:00 p.m.

Please call the Center at 513-556-7185 if you would like additional information on Center membership, or visit our web site at www.Goering.uc.edu.

Publisher's Note:

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The Family Business Report

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GOERING CENTER

Telemarketers, Faxes and Spam! Oh My! Legal Limits on Unwanted Communications

Graydon Head & Ritchey LLP

John P. Colbert, John C. Greiner, and Brian C. Thomas, Graydon Head & Ritchey LLP

Small businesses these days frequently find themselves inundated with communications - many uninvited. Whether it's telemarketers' calls, fax advertisements or the ubiquitous e-mail messages offering any number of unwanted items, these unsolicited transmissions are a drain on time and resources. On the other hand, advertisers need to sell goods and services, and they certainly wish to use all available media to do so.

State and federal lawmakers have attempted to balance the needs of recipients not to be bothered with the needs of advertisers by passing a variety of laws. Whether these laws are successful is subject to debate, but it is beyond question that more tools now exist to fight unwanted communication than ever before. How recipients will exercise those tools, and how advertisers will respond, are questions that will be preeminent in the coming months and years. This article outlines the laws covering the three most ubiquitous communications -- telemarketing calls, faxes and e-mails. Weary recipients should know their rights, and advertisers should be careful not to inadvertently trip on the new regulatory landscape.

When "Do-Not-Call" Means Do Not Call

Many view the recently developed National Do Not Call Registry as the government's first attempt to curb the barrage of telemarketers. However, many are unaware of the federal law passed in 1991 banning telephone solicitations, the Telephone Consumer Protection Act (TCPA). Unlike the National Registry, which can impose fines against offending companies, the TCPA provides citizens with a private right to sue violating telemarketers. That means ordinary citizens can sue telemarketers if the citizen receives a call after he has previously requested that his telephone number be placed on the company's do-not-call list.

Q. What does it cover?
A. Telephone solicitations. The term "telephone solicitation" is defined as the initiation of a telephone call or message transmitted to any person for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services. Calling or leaving a message for any person with whom the caller has an established business relationship is not a telephone solicitation.

Q. What does it prohibit?
A. The TCPA prohibits telemarketers from soliciting an individual after that individual requests that his telephone number be placed on the company's do-not-call list. A telemarketer violates the TCPA if the telemarketer solicits a listed individual more than once during any 12-month period. Unlike the National Do Not Call Registry, individuals cannot register in one location. Rather, individuals must inform each company that they wish to be placed on that company's do-not-call list.

Q. What does it require?
A. Once requested, a telemarketer must place an individual's name on its do-not-call list and honor that request for 10 years.

Q. Are there any defenses?
A. The TCPA provides an affirmative defense to liability for telemarketers. For example, it is a defense to liability if the telemarketer has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations.

Q. What about state law?
A. The federal law does not preempt or supersede state laws that impose more restrictive intrastate requirements.

Q. How is it enforced?
A. The federal law provides a "private right of action." That is, the TCPA permits an individual to sue the telemarketer in court. If successful, the individual can recover the greater of actual monetary loss or $500 in damages for each unlawful telephone solicitation. However, if the court concludes that the telemarketer's violation was "willful" or "knowing," the court can assess treble damages up to $1,500 per telephone solicitation.

Q. Does Ohio have a Do-Not-Call law?
A. Yes. Ohio enacted a Do-Not-Call law on Jan. 13, 2004.

Q. What does it do?
A. Ohio's Do-Not-Call legislation authorizes Ohio's Attorney General to: file suit against violators in state court, enforce state and federal telemarketing laws, conduct investigations, take telemarketing violations to the appropriate court on behalf of Ohio residents and recover damages or civil penalties. The law also creates the Telephone Solicitation Protection Fund in the state treasury where civil penalties will be deposited to pay the Attorney General for the costs associated with investigating and enforcing the law. The law will go into effect on April 12, 2004.

Careful, That Fax May Cost You $500

In addition to banning telephone solicitations, the TCPA also makes it illegal to send junk faxes to business and residential fax machines.

Q. What does it cover?
A. "Unsolicited advertisements" or "junk faxes." The term "unsolicited advertisement" is defined as any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

Q. What does it prohibit?
A. The TCPA prohibits and makes it unlawful for anyone to use any fax machine, computer or other device to send a junk fax to a fax machine. These protections apply to both individuals and businesses.

Q. What does it require?
A. To be illegal under the TCPA, a fax must be unsolicited and advertise the commercial availability or quality of property, goods or services. Generally, a fax advertiser has an obligation to obtain prior express consent from the recipients of its advertisements, and to keep and maintain records of such consent. Consent may not be inferred from the mere distribution or publication of a fax number, or the existence of a previous business relationship between an advertiser and the recipient, in the absence of specific evidence of "prior express invitation or permission" to send advertisements by fax.

Q. What about state law?
A. The federal law preempts, or supersedes state laws. That means that faxing of "junk faxes" is illegal in all 50 states. In addition, any state law provisions that are more restrictive than federal law are not preempted. This means that states can establish additional restrictions on top of the TCPA restrictions. At the present time, neither Ohio nor Kentucky has enacted state laws relating to junk faxes.

Q. How is the law enforced?
A. The federal law provides a "private right of action." That is, the TCPA permits an individual to sue the junk faxer in court. Using this law, recipients can collect damages of at least $500 per junk fax. Willful or knowing violations can bring damages of up to $1,500 per junk fax. Recipients can also file a complaint with the FCC (www.fcc.gov/cgb/complaints.html) and/or file a complaint with your state's attorney general. Recently, Hooters of Augusta hired a fax service that sent six unsolicited junk faxes to each of 1,321 fax numbers. A class action TCPA case was brought against Hooters and the court ordered Hooters to pay treble damages of $11,889,000.

Has "SPAM" Met its Match?

The recently enacted federal law known as "Can-Spam" does not prohibit sending spam. Rather, the law, which took effect on Jan. 1, 2004, seeks to eliminate deceptive and misleading e-mails and provides consumers with an opportunity to "opt out" of receiving additional e-mail messages.

Q. What does it cover?
A. Unsolicited commercial e-mail messages (UCE). "Commercial" means any electronic mail message whose primary purpose is to advertise or promote a commercial product or service. This definition thus excludes charitable, religious or political messages.

Q. What does it prohibit?
A. Sending UCE that contains materially false or misleading header information (that misleads as to the origin of the message) or misleading subject information (that misleads as to the subject of the e-mail's content).

Q. What does it require?
A. The UCE must contain a valid, functioning return e-mail address that allows the recipient to opt out of receiving further e-mails. The UCE must also identify itself as an

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GOERING CENTER

Fee-Based or Commission-Based: Choosing a Financial Planner 101

Gradison McDonald Financial Group

Bob Moore, Gradison McDonald Financial Group

Many people find the task of choosing a financial planner somewhat daunting. However, it is one of the most important decisions a person can make.–What do you need to know about choosing the right financial advisor for your needs?

The ideal financial planner is a trained, experienced professional who inspires trust and demonstrates the highest level of competence and integrity. His or her role in a family's finances is as crucial as that of a family attorney.

Like attorneys or other professionals, some financial planners specialize in certain areas – insurance for instance. The upside of this approach is that the advisor is highly knowledgeable about that particular product. The challenge is that a specialist may have a rather limited focus. For example, a financial planner at an insurance company may focus on offering insurance products as a solution to your financial needs. A mutual fund firm may suggest you put your money and trust in mutual funds.

While one of these solutions may, in fact, be right for a particular investor or family, each may be only part of the picture that you should examine before deciding on the best financial plan for your future. A financial services provider who offers a broad range of options is more likely to meet all your needs over your lifetime, to understand your risk tolerance and goals, and truly to act as a trusted advisor.

In addition to differing in terms of the range of solutions they can provide, advisors also differ in how they are compensated. The ideal financial planner is the professional whose personal financial incentives best match those of his or her customers. In other words, you want an advisor who gets paid for doing a good job for you, not for selling particular products.

Financial planners are paid commissions, fees or a blend of both.

There are three types of commission payments:

- one-time sales rewards, such as mutual fund "loads" or the upfront payments that come from selling annuities and cash-value life insurance policies,
- ongoing, annual service payments, such as those made to insurance agents upon policy renewal and
- those paid for such transactions as buying and selling shares of stock.

Other planners are paid fees based either on a percentage of a family's total assets or on just those funds the planner manages. This is the most common form of payment for independent financial planners.

Some planners are paid fees based on an hourly rate, like those paid to a lawyer. Others receive an upfront payment for developing a financial plan, including an inventory of assets and a plan of action.

Planners who are paid on a fee basis are better positioned to advise customers about investment options from an objective and neutral viewpoint than those who are inclined to recommend those investments that offer them the highest commission.

Fortunately, investors can now resolve any confusion they may be experiencing about all this, now that structural changes in the financial services industry have allowed full-service banks to become convenient, comprehensive conduits for investment services.

For example, Key combined the capabilities of its Key PrivateBank organization (which has roots that go back well over a century) with the capabilities of the retail brokerage business of its McDonald Investments organization to create Gradison McDonald Financial Group, which offers truly integrated solutions. Unlike many firms, where commission-driven salespeople compete, Gradison McDonald Financial Group examines an investor's circumstances from every

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Goering Center for Family & Private Business - Executive Breakfast Series

presents

Tim Shepelak, The Growth Coach

Tim Niehaus, Third Generation Owner of the Miami Corporation

"Are you Facing Reality?"

A Unique, Hands-On Look in the Mirror for Business Owners and Their Advisors

April 27, 2004, 7:30 - 9:30 A.M.

Quality Hotel & Suites 4747 Montgomery Road, Cincinnati, Ohio 45212

Seldom do busy, overworked business owners slow down to reflect, face reality and map out the critical changes they need to make to get more out of their businesses and lives. They are so trapped in the details of the business; they don't realize that greater fulfillment, freedom, and financial success come from shifting mindsets, not gears.

Tim Shepelak, a passionate, CEO-level business owner and coach, will actively guide you through your own reality check. What **is** working in your business and personal life and what **is not**. With a foreword and insightful perspective shared by Tim Niehaus, third generation owner of the Miami Corporation and client of The Growth Coach, you will learn about the ultimate business goal, your path to a more valuable business, and the strategies to better manage your company and personal life.

Find out if you have fallen into the traps that undermine a business and lead to a sub-optimized business and life. Rate yourself as a "Strategic Business Owner," clear some fog, and gain clarity of vision and purpose. If you are a business owner or advisor, you owe it to yourself, your family, and the families that depend on your business to participate in this unique, self-discovery experience.

Name:

Company:

Address:

City/state/zip:

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***Financial Planner**...continued from page 4B*

angle and offers a broad, integrated and objective perspective that encompasses banking, brokerage services, trust and insurance products.

Clearly, the advantage of such broad service and product offerings is neutrality. A financial planner can focus on an individual client's needs rather than be motivated to sell a particular commission-rich product. This neutral approach begins with the BluePrint financial plan, a comprehensive product-neutral procedure that moves from an objective analysis of an investor's current situation and long-term goals to a practical strategy to meet those goals. Gradison McDonald Financial Group planners work closely with their customers to implement the strategy and monitor its effectiveness.

This approach has generated such remarkable loyalty and trust that families often maintain client relationships over several generations and the span of decades.

The changes in federal regulations that made it possible for full-service banks to provide customers with a more complete array of services and advice have significant implications for consumers. When planning for your financial future, seek out a financial services provider that can help you create a broad investment framework that takes into account fee-based investment services, banking, trust and insurance. The result will be a comprehensive, neutral, customer-oriented approach that puts you in control of the "big picture."

A financial services provider who offers a broad range of options is more likely to meet all your needs over your lifetime, to understand your risk tolerance and goals, and truly to act as a trusted advisor.

Bob Moore is Managing Director of Gradison McDonald Financial Group. His office is at 580 Walnut Street and he may be reached at 579.5089 or bcmoore@mcdinvest.com.

Choosing a financial advisor is a complex process at best. It requires an understanding of the range of services available and their particular advantages. As a helpful starting point, Bob Moore explains fee-based and commission-based investment services and recommends an efficient pathway toward choosing which is right for you: Marcia Hagler, 762.8464

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2004 TRI-STATE FAMILY BUSINESS OF THE YEAR AWARDS

Nomination Form: FBOY 2004

Simply fax this completed form to the Goering Center office at (513) 556-6044.

About the Nominee..

Company Name _____

Address _____

City/State/Zip _____

Phone _____

Fax _____ E-mail _____

Principal Owner _____ # Employees _____

Principal Product of Service _____

About the Nominator...

Name _____

Company _____

Address _____

City/State/Zip _____

Phone _____

Fax _____ E-mail _____

What is your association with the family business you are nominating? _____

_____

Deadline for submitting nominations is April 30, 2004.
An application will be forwarded to the nominated business upon receipt of this completed nomination form.

August 24, 2004 · 6-9 pm · Music Hall

To honor the enormous positive contributions made by family companies, both large and small, the University of Cincinnati and the Goering Center for Family & Private Business are pleased to announce the 5th annual Tri-State Family Business of the Year Awards. The competition will work as follows: Nominees will be judged on the basis of their positive family-business linkage, their business success, their multiple family member and/or multiple generation involvement, their contributions to community and industry, and their innovative business practices, products or strategies.

Awards will be granted in four categories:

- Under 100 employees
- Over 100 employees
- Innovation (Products, Markets, Organizational)
- Community Service

The nominations and judging will take place in two steps. Nominations may be submitted by anyone and businesses are encouraged to nominate themselves. Nominations are due by April 30, 2004. Once a nomination is received, a detailed application will be sent to the nominated businesses, which must be returned by June 30, 2004. All applications will be reviewed by a panel of independent judges from various professional disciplines and by owners of family businesses.

Rules for Nominations

1. Businesses must be headquartered in Ohio, Kentucky or Indiana.
2. A business may be nominated by anyone, including employees or business associates, or by self-nomination.
3. All family businesses are eligible.
4. All nominations must be recieved by no later than April 30, 2004.
5. Awards will be given in the following four categories:
   - Under 100 employees
   - Innovation (Products, Markets, Organizational)
   - Over 100 employees
   - Community Service
6. Applications sent to nominees must be returned by June 30, 2004.

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The Greater Cincinnati Foundation
The Gorilla Glue Company
The Imbus Roofing Co., Inc.
The Lumley Group, Inc.
The Verdin Company
The Walt Lunsford Financial Advisory Group of Advest, Inc.
The Wise Group
The Wolfe Practice, LPA
Trans-Borders Technology
Truitt Roofing Company
Unistrut Cincinnati
University of Cincinnati College of Business
U S Bank
Verst Group Logistics
Vinylmax LLC
Wardway Fuels, Inc.
Whetstone Management
Wilson Assoc. Financial Group
Wm. Kramer & Son, Inc.
Woodlawn Rubber Co.

KeyBank

Mellott & Mellott, P.L.L.

Goering Center for Family & Private Business
Family Business Executive Luncheon Series

presents

Mike LaRosa and T. D. Hughes, LaRosa's, Inc.

May 25, 2004 - 11:30 - 1:30 Lunch Program

Quality Hotel & Suites 4747 Montgomery Road, Cincinnati, Ohio 45212

In 1954 Buddy LaRosa's passion was to build his own business. With only a couple of partners, $400 cash, and his Aunt Dena's pizza recipe, Buddy opened a small pizza parlor to serve his neighborhood. Now, 50 years later, LaRosa's, Inc. serves hundreds of neighborhoods throughout Greater Cincinnati and Northern Kentucky, the Miami Valley and Southeast Indiana. Millions of people have made LaRosa's pizza number one in Greater Cincinnati! Buddy's sons Michael, President and Chief People Officer, and Mark, Executive Vice President of Food and Product Development, both attended the Goering Center's Next Generation Institute, and LaRosa's, Inc. was awarded the Goering Center Family Business of the Year Award in 2000 in the category of Community Service.

Mike, along with T. D. Hughes, will share some of the many challenges of transition, management and relationships that has made LaRosa's, Inc. one of the most successful family businesses in the Tri-State area.

Yes! I'll attend the Family Business Executive Luncheon on May 25, 2004
Reserve a seat for a prospective new member, and their lunch is on us!

Name:	Phone, fax or e mail registration to (P) 513-556-7185, (F) 513-556-6044, e mail Goering@uc.edu. Mail registration and check to: Goering Center, University of Cincinnati, PO Box 210228, Cincinnati, Ohio 45221-0228
Company:	
Address:	
City/state/zip:	**Cost - $18.00 Members - $23.00 Non-Members**
Phone/fax:	Due to catering contract, payment for reservations not cancelled by May 21, 2004 is due in full.
E-mail:	

***Family Business Compensation**...continued from page 1B*

either pay family members equally or base the compensation on the market value of their jobs.

2) Determine the market value of particular jobs.
3) Determine if positions only will be paid at the average of the market value, or above, or below the average.
4) Adjustments to pay may reflect qualitative characteristics of the position as it relates to its strategic importance to the company.
5) Determine if you want to offer an annual incentive plan based on personal goals and/or performance.
6) Personal goals and pay incentives need to be negotiated each year.
7) Establish job classifications and criteria for assessing performance.
8) Determine if you want a longer-term incentive plan.
9) If a longer-term incentive plan is established, what will be the criteria for awarding special compensation-book value increase, profit growth, etc.
10) Communicate clearly to everyone the company's philosophy on compensation and your plan to review the policy every year.

We have only touched on a few issues that need to be addressed when evaluating and developing a sound family business compensation strategy. Future articles in this column or others in our Family Business Report will speak further to compensation matters. We hope if you have some specific questions about your own situation, that you will call us at the Goering Center at 513-556-7185. We have resources to help you in a variety of ways. Please also remember, that we would like you to consider becoming a member of the Center. Membership in the Center offers many benefits, and it's an important part of our financial support. We stand ready to serve you in any way we can. Until next time…….WKL

***Unwanted Communications**...continued from page 3B*

advertisement, clearly and conspicuously provide notice of the recipient's right to opt out, and provide a valid physical postal address.

Q. Can I make the UCE stop?
A. If the recipient exercises the right to opt out, the sender may not, more than 10 business days after the receipt of such a request, send UCE that falls within the scope of the request. The "opt out" applies not only to the "sender," or the entity whose product is being promoted, but also to any person "acting on behalf of the sender." Thus, a vendor who actually delivers the e-mail also needs to comply with the recipient's opt out request

Q. What about state law?
A. The federal law preempts or supersedes state laws, except to the extent that the state law prohibits misleading or deceptive content. Accordingly, while a state could pass a law banning e-mail with deceptive headers, it could not pass a law banning all commercial e-mail.

Q. How is the law enforced?
A. The federal law does not provide a "private right of action." That means that an individual recipient cannot take a sender directly to court. Rather, the power to enforce the act is left to the FTC and certain other federal agencies, state attorneys general, and internet service providers. The FTC can seek a fine up to $11,000. In an action by a state attorney general, statutory damages can total up to $250 per violation, but this amount may be tripled if the sender acts willfully, or commits certain other aggravating acts, as defined in the statute. In any successful enforcement action, attorney fees may be recovered.

Many consumer advocates were disappointed by the Can-Spam Act. They would have preferred a ban on unsolicited commercial e-mail, or at least a procedure where the sender first had to obtain the recipient's permission before sending the e-mail. But advocates of the act feel that it targets the "bad guys" and provides consumers with the opportunity to limit the amount of unwanted e-mail they receive. The open question of course is whether it will actually work.

(Please remember, this article is not intended as a substitute for legal advice. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. You should consult with an attorney familiar with the issues and the laws.)

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