



Eagle Wealth Planning Institute

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“Employee Stock Ownership Plans”

Presented by: Brian A. Eagle

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Linking assets for generations

To schedule an informational meeting and learn how you can create Purposely Designed Organized Plans[™], contact Elizabeth at elambert@inheralink.com

Topics to be Covered

1. BSP Assessment
2. Definition of Proper Planning
3. ESOP and Financial/Estate Planning
4. Overall Structure
5. Section 1042
6. Intro to the ESOP/Wealth Design
7. Planning Process
8. ESOP Stories – Case Histories

The Business Succession Planning Process - The Assessment

1. I would like to sell to an outsider now, not worry about the future success of the Company, and start on a new adventure in my life.
2. I want to transition or sell the Company to either key employees or family.
3. I have at least one child that I want to succeed me, but other children that are not part of the Company.
4. I want to continue to be responsible for the Company's success and failures over the next 5 – 10 years but slowly becoming less and less involved in the day-to-day operations.
5. My key employees and/or family can currently run the Company, or should be able to run it in 24 months with proper training.

The Business Succession Planning Process - The Assessment

6. I love work, I'm in great health, and I can't imagine ever slowing down.
7. I need to diversify my personal financial statement and desire a cash payment/liquidity now, followed another payout in 5 – 10 years.
8. My Company and/or I are in the highest tax bracket.
9. I want to provide my employees long-term incentives that are tied to the success of the Company.
10. I view the Company as my legacy to my community and my employees.

The Business Succession Planning Process - The Assessment

- Answer True to Question 1
 - Consider Sale to Outsider
- Answer True to 3 out of 4 of Questions 2 – 5
 - Consider Sale/Transition to Insider or Family
- Answer True to Question 6
 - Consider The Family Legacy Plan
- Answer True to 3 out of 4 of Questions 7 – 10
 - Consider an ESOP or Partial ESOP

THE DEFINITION OF PROPER PLANNING

I want to **organize my affairs** to create a **Purposely Designed Organized PlanSM** which:

- Controls my assets during my lifetime so I can do what I want to do.
- Provides for me and my family in the event of disability;
- Allows me to give what I have, to whom I want, the way that I want, and when I want; *and*
- If desired, enables me to, save every last tax dollar, administrative cost, and legal fee possible.

ESOPs and Estate Planning

- Passing the value of the business or the business itself
 - **The Planning Model –**
 - Managing the value of the family business
 - Creating the cash flow
 - Combining passing the value of the business and the business itself
- What is Fair and Equal

Is Being an Employee Owned Company Right For You?

- Why are you interested in implementing an ESOP?
- Take the Business Planning Assessment –
 - Both Parents and Child or Children employed in the business



ESOP Overview

- An Employee Stock Ownership Plan (ESOP) is a unique qualified retirement plan instituted to facilitate the transference of equity in privately held businesses to employees



ESOP Overview

- There are approximately 6,322 ESOP Companies across the U.S. which cover 14.7 million employees.
- The Midwest is home to the greatest number of ESOPs.

Midwest

- **1,668 ESOPs**
- **873,119 employees**

Indiana

- **178 ESOPs**
- **33,087 employees**



Indiana ESOP Companies



Reasons for Establishing an ESOP

- Tax benefits
- Avoids third party sale
- Employees become “beneficial” owners of Company – benefit financially from future growth of Company

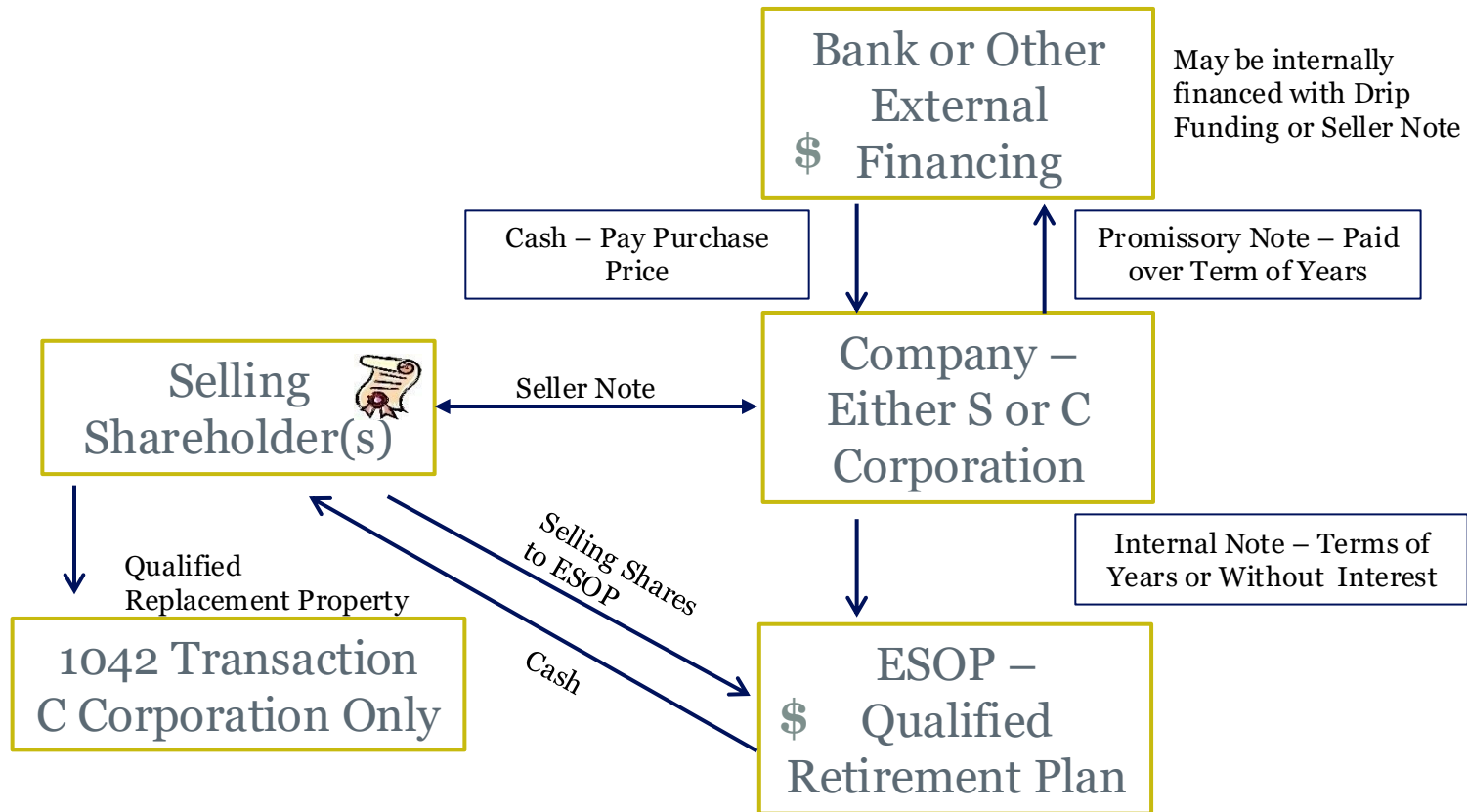


Employees - Benefits of an ESOP

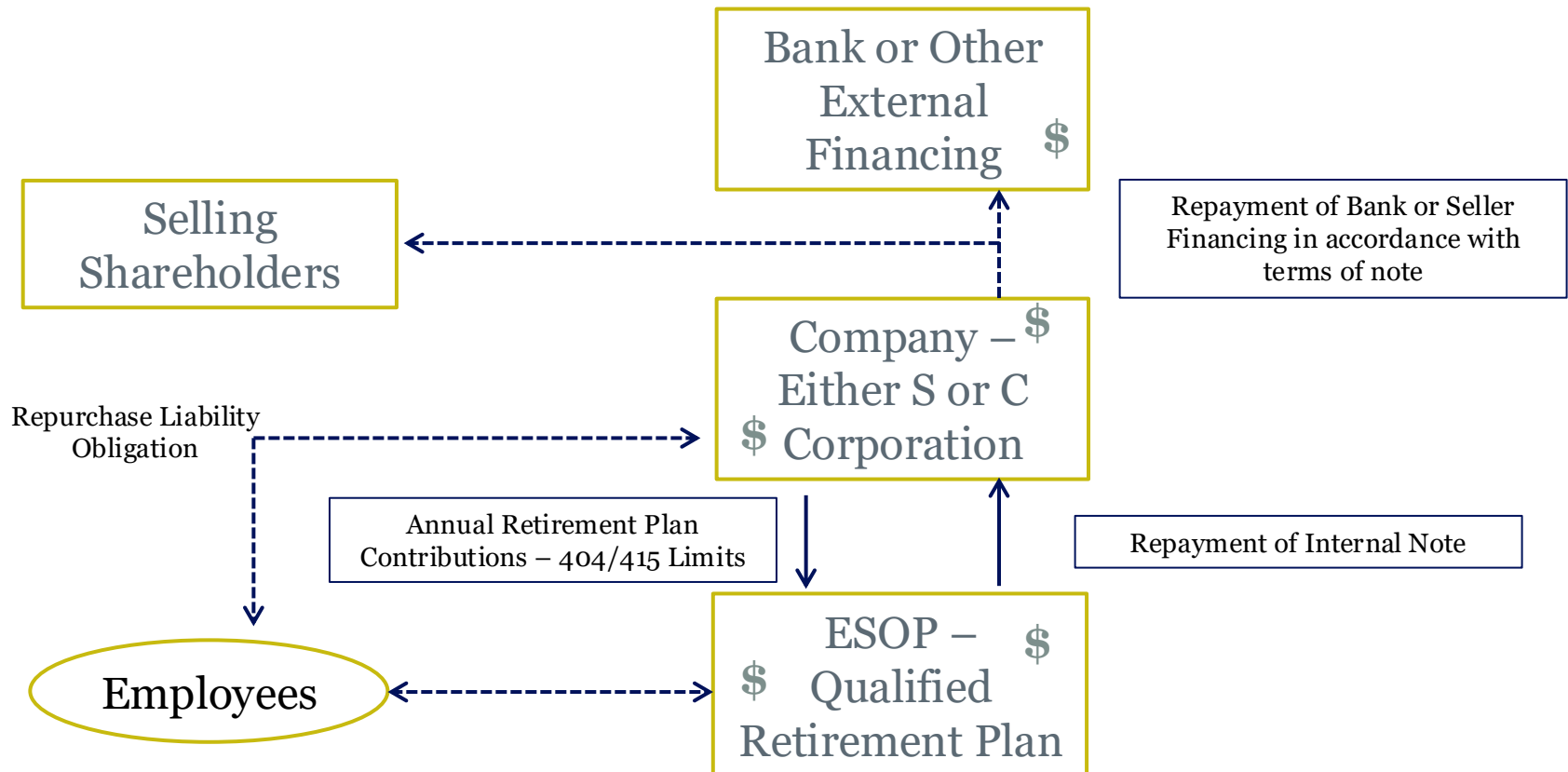


- Tax-qualified retirement plan
- Ownership Culture/Pride
- Potential to impact the value of the Company
- 100% funded by Company – no employee contributions
- Business skills development

The Overall Structure



Annual Structure - The Flow of Funds



ESOP Mechanics - Like Home Ownership



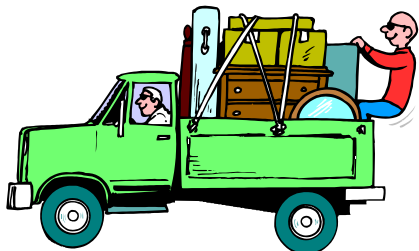
Sell house \$\$\$



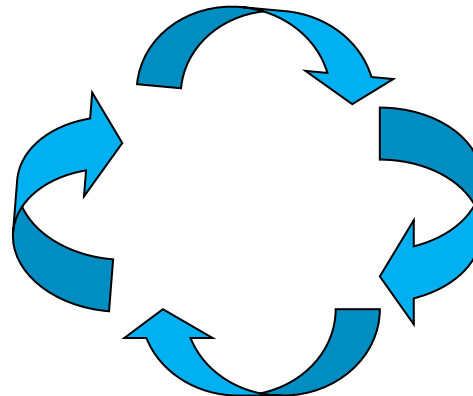
Find a home



My money; bank's money



Decide to move or retire

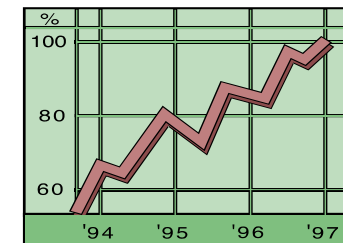
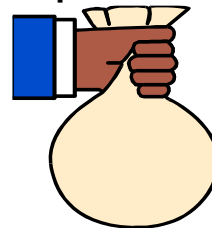


Pay for expenses each year

Purchase a home; bank holds title and deed

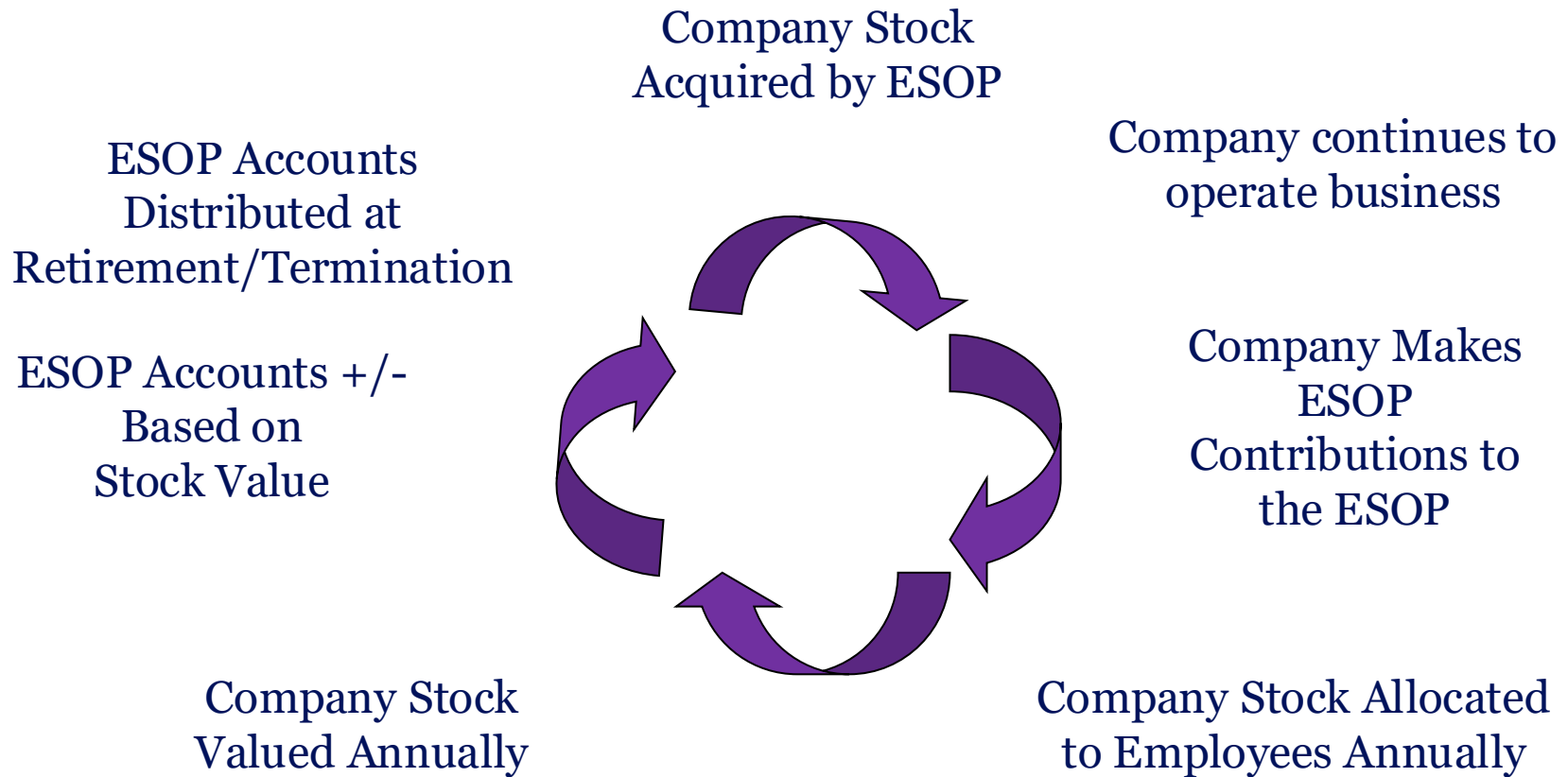


At times you need to invest money in repair or additions



You hope the house increases in value, you gain equity over time

ESOP Lifecycle



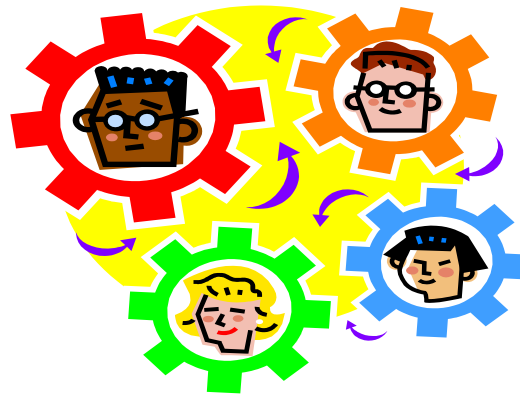
Attributes of Beneficial Ownership

What they **ARE**:

- Equity interest
- Retirement benefits

What they are **NOT**:

- Day-to-day decision-making
- Hiring decisions
- Access to confidential information



Management of the Company

- No change in corporate decision-making
- Managers still have the responsibility for day-to-day business operations
- The Board and Executives have the same responsibility for prudent decisions in the interest of all shareholders
- Trustees have a responsibility to operate the trust in the interest of ESOP participants
- Employees still have their job responsibilities

The Overall Structure

- Benefits of ESOP to Seller
 - Diversification of non-liquid and highly concentrated equity position
 - For C Corporation tax deferral and potential elimination of capital gain
 - Creates the necessary cash flow for advanced estate planning strategies
 - For S Corporations – converts ordinary income to capital gain
 - Leaves a lasting legacy and provides for the continuation of a business
 - Can create super discount for transferring interests to family members or trusts for the benefit of family members

The Overall Structure

- Benefits of ESOP to Company/Purchaser
 - Increases cash flow by allowing tax deductions for both principal and interest payments
 - Increases employee productivity by making the employees “Employee Owners”
 - Keeps jobs in the community v. a potential outside sale
 - Can create tax free entity for 100% ESOP owned S Corporations

The Overall Structure

- Benefits of ESOP to Employees
 - Provides employees an equity interest in the corporation without cost
 - Creates a “We Can” attitude versus an “Us and Them” and “We Can’t” attitude
 - Provides employees with increased retirement plan contributions
 - Allows employees to maintain positions and remain employed
 - Allows senior management to maintain control

Section 1042

What Is It?

- Only available in C Corporation ESOP
- Allows seller to defer or potentially eliminate capital gains
- Requirements contained in Section 1042 of the Internal Revenue Code

Section 1042

- Requirements
 - After sale ESOP owns 30% of Outstanding Stock
 - Selling Shareholder has owned shares for the last 3 years
 - Selling Shareholder purchases “Qualified Replacement Property” within 15 months of ESOP Sale (3 months before and 12 months after)
 - Company consents to Section 1042 Treatment

Section 1042

- Requirements (cont.)
 - Selling Shareholder files appropriate filing with the IRS with Income Tax Return
 - Verified Statement of Consent
 - Election to Treat Sale
 - Statement of Purchase
 - Qualified Replacement Property
 - Securities (Equity and Debt) of domestic operating corporations
 - Domestic Operating Corporation

Section 1042 - Does Not Qualify

- Requirements (cont.)
 - What does not qualify as a QRP
 - US Government Agency Bonds
 - Municipal Bonds
 - Mutual Funds
 - Real Estate Investment Trusts (REITs)
 - Securities of Foreign Corporation
 - Seller Financing Notes
 - Bank CDs
 - Foreign Securities
 - Master Limited Partnerships (MLPs)

Section 1042 - Does Qualify

- Requirements (cont.)
 - **What does qualify as a QRP**
 - Common stock, preferred stock, bond, and convertible bonds of “operating companies” incorporated in USA
 - Common Stock
 - Preferred Stock
 - Convertible Bonds
 - Corporate Fixed Rate Bonds
 - Corporate floating rate notes (FRNs)

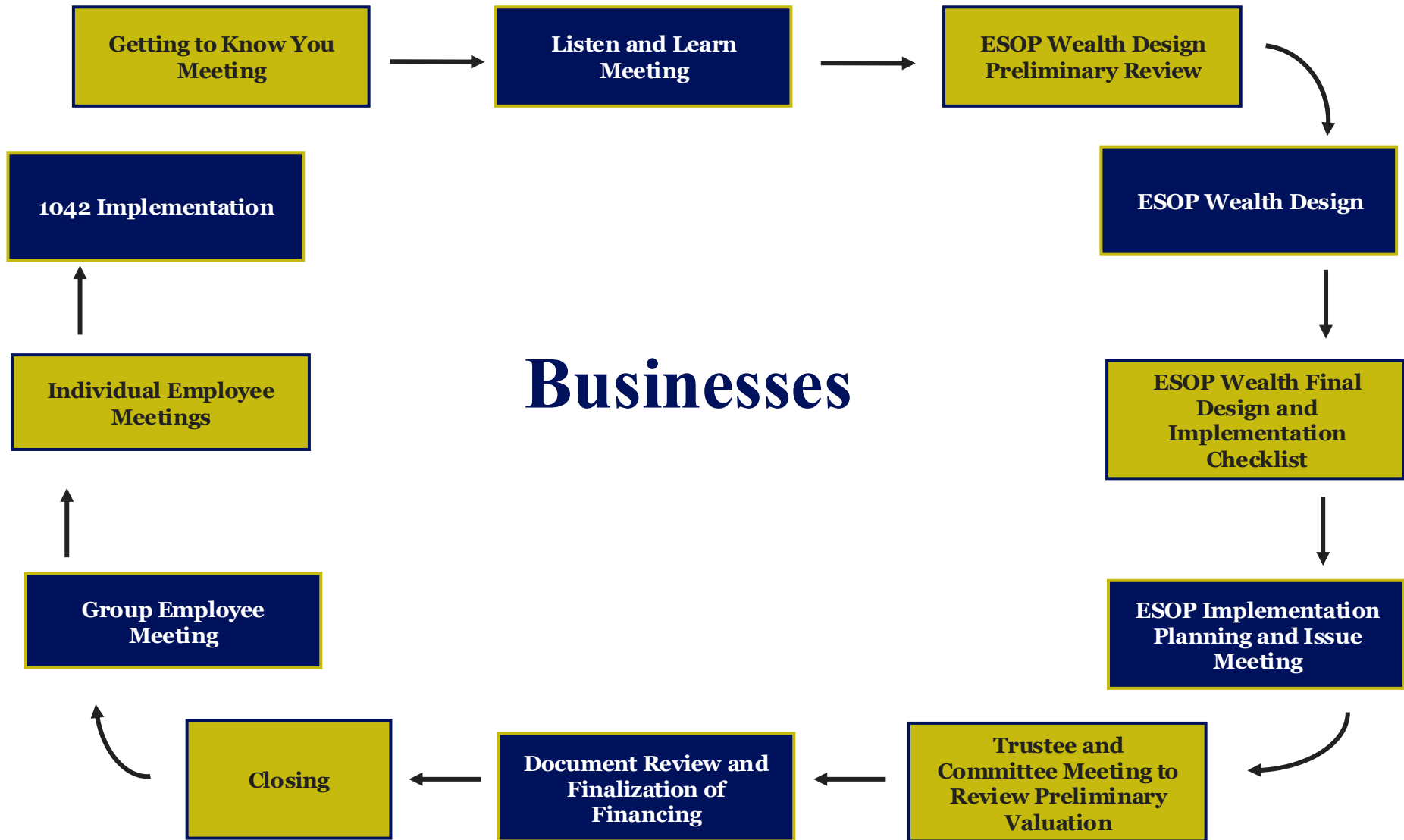
Section 1042 - Floating Rate Notes

- A senior Secured Corporate Debt Instrument (Corporate Bonds)
 - Long Maturities - 40 – 50 Years
 - Rates Float – Rates reset every 90 days
 - Holder has Put Provision
- Example of Company that issue FRNs:
 - P&G, Colgate, UPS, Wells Fargo, Merck, 3M, & US Bank

Section 1042 - Passive, Active, or Blend

- Client Option
 - **Passive**
 - Portfolio of qualifying stocks and/or bonds designed to be held over the selling shareholder's lifetime
 - Capital Gains realized if sold during selling shareholder's lifetime (sell after death no capital gain)
 - **Active**
 - Purchase FRN as QRP
 - Leverage FRN with Monetization Loan
 - Cash at Closing and payments under Seller Notes are invested in diversified portfolio or other investments
 - Provides Seller with greater liquidity and flexibility
 - Expense are higher
 - **Blend**
 - Combines both Passive and Active Strategy

Introduction to the ESOP Wealth Design



ESOP Stories, Case History #1

- Distributor of Vision Therapy Solutions

ESOP Stories, Case History #2

- Conveyor Belt Distributor and Consultants

ESOP Stories, Case History #3

- Distributor of Building Supplies

ESOP Stories, Case History #4

- Construction Company – Installation of Highway Guard Rail and other protective barriers

Question and Answer Session



Inspiring People to Plan

Planning for You, Your Family, & Your Business

- 
- **Estate Planning**
 - **Wealth Strategies Design**
 - **Business Succession Planning**
 - **ESOPs**
 - **Corporate Counsel**
 - **Business Transactions**
 - **Estate/Trust Administration**
 - **Elder Law/VA & Medicaid Planning**
 - **Probate & Trust Litigation**



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Managing
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Brian A. Eagle is a nationally recognized attorney, educator, author, and wealth strategy consultant.

Brian is an Indiana University Kelley School of Business alumnus (B.S. Accounting, 1986) and Hofstra University (J.D. 1990). His professional accomplishments include founding the law firm, Eagle & Fein, P.C., of Indianapolis where he serves as managing attorney; co-founding Legacy Administration Services, a company focusing on estate planning administration, and Inheralink®, a digital estate planning client portal; and founding the Eagle Wealth Planning Institute, where he serves as the Director of the institute.

Brian passed the Certified Public Accountant Examination in 1988 and is a member of the Indianapolis, Indiana State, and American Bar Associations.

Brian served as student manager of the Indiana University Men's Soccer Team from 1983-1986. In 1996, he was recognized by Indiana University Soccer for his years of dedication and outstanding service to youth soccer and received the Indiana Youth Soccer Association Presidents Award for outstanding contributions to the growth of youth soccer in Indiana.

Brian resides in Fishers, Indiana with his wife, Kellie, and they are the proud parents of their son, Zachary.

Scott J. Linneweber, slinneweber@eagleandfein.com



Attorney &
Shareholder

Scott Linneweber is an Attorney and Shareholder at Eagle and Fein, P.C. Scott's practice focuses on Estate Planning, Elder Law, Medicaid and VA Benefit Planning, and Business Succession Planning.

Prior to law school, Scott attended the University of Evansville (B.S. 1992) and Southern Illinois University at Carbondale (M.S.Ed. 1995). A summa cum laude graduate of the Indiana University Robert H. McKinney School of Law (J.D. 2003), Scott was a Note Development Editor for the Indiana Law Review and was awarded the Faculty Prize and the Berlon Pro Bono Award.

Scott's interest in the law began while he was working for the Vincennes University Foundation, where he began learning about the various legal strategies individuals could use to both plan for their personal future and make charitable contributions.

Admitted to practice in Indiana, Scott's work in Medicaid began in 2004 as a Staff Attorney for the Family and Social Services Administration. He served as in-house counsel for the Office of Medicaid Policy and Planning, the Indiana Prescription Drug Program, and the Children's Health Insurance Program. Prior to joining Eagle and Fein, P.C. Scott was the Director of Compliance and Counsel for Managed Health Services, a Medicaid managed care organization where he acted as the primary point of contact for regulatory entities, represented the organization in administrative hearings, and oversaw regulatory reporting, auditing, vendor oversight, and policy development. Together with his colleagues, he is a co-author of the highly acclaimed book, *Estate Planning Strategies: Collective Wisdom, Proven Techniques of Wealth Counsel Attorneys*, 2022.

Scott resides in Indianapolis with his wife Danielle, daughter Elliott, and dogs Stella and Archie. When not serving his clients, Scott enjoys spending time with his family and volunteering with 4-H.

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Associate
Attorney

Evan is an Associate Attorney for Eagle & Fein, P.C. Evan's practice includes assisting as corporate counsel for various businesses, as well as business succession planning, executive compensation, ESOPs, mergers and acquisitions, and transactional work. Evan is devoted to helping clients achieve their business goals and establish plans for growth and success.

Evan obtained Bachelor's Degrees in Political Science and English Rhetoric and Writing from Ball State University in 2020. He graduated from Indiana University Robert H. McKinney School of Law in 2023. In law school, Evan served as the Executive Notes Editor for the Indiana Health Law Review, was a member of the Dean's Tutorial Society, and was a legal writing tutor.

Evan resides in Indianapolis with his wife, Mindy, and daughters, Ellie and Bridget. Evan is an avid tennis player, golfer, and enjoys spending time with his family, watching movies, and long talks with friends.

Colin Downey, cdowney@eagleandfein.com



Associate
Attorney

Colin is an Associate Attorney for Eagle & Fein, P.C. Colin's practice areas include Estate Planning, Estate & Trust Administration, Business Succession Planning, Wealth Strategies Design, and Intellectual Property. Colin is admitted to practice in Indiana and Virginia. Colin is devoted to helping clients create purposely designed organized estate plans that meet the definition of proper planning.

Colin obtained a Bachelor's Degree in Psychology along with a heavy-scientific background from Wabash College in 2015. Upon graduating, Colin obtained a PhD in 2020 from Indiana University in Vision Science with a General Background in Neuroscience. He graduated from Indiana University, Robert H. McKinney School of Law at the end of 2022. Colin received a Graduate Certificate in Intellectual property upon graduating from McKinney. During his time in law school, he completed Externships in Intellectual Property for Eli Lilly & Company and Indiana University's Innovation and Commercialization Office. Colin also worked as an Intern for the Marion County Public Defender Agency within their Major Case Unit.

Colin resides in Bloomington with his wife, Chelsea, and daughters, Mavis and Peri. Colin enjoys spending time with his family and friends, traveling, taking in the outdoors, and fishing. Colin is an avid sports fan and enjoys watching the Colts and the Pacers.

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