HUSCH BLACKWELL



Mark D. Welker

SENIOR COUNSEL

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OVERVIEW

Mark helps entrepreneurs realize the fruits of their labor while moving their businesses forward.

When owners of privately held businesses decide it's time to develop and pursue a plan to transition their involvement with the company, Mark helps develop a business succession plan. He strategizes with clients to identify succession goals, decide how best to achieve those goals and execute the transaction.

Although Mark does not practice accounting, his certified public accountant (CPA) skills enable Mark to understand what makes clients' companies tick and to analyze the most financially beneficial plans for implementing client goals.

Mark is particularly passionate about the creation and operation of employee stock ownership plans (ESOPs). Mark believes ESOP transactions are a capitalistic, market-based, fair way of transferring wealth to rank and file employees while allowing the business owner to realize full fair market value for the business in a way that is subsidized by tax incentives. ESOPs provide an opportunity to create wealth for individuals who otherwise might not have access to it. These transactions are truly about doing well by doing good for others, and Mark enjoys witnessing the impact ESOPs have on sellers' and employees' lives.

> *"Mark has an extremely high level of expertise, intellect and ability to deal with complex matters."*
>
> — Chambers USA 2025

Industry

Financial Services & Capital Markets

Services

Alternative Investments

Asia

Business Succession Planning

Canada, Mexico, Central, & South America

Employee Benefits & Executive Compensation

Employee Stock Ownership Plans

Equity, Incentive, & Deferred Compensation

Europe, the Middle East, & Africa

International

Private Wealth

Retirement, Health, & Welfare Plans

Tax

Traditional Labor Relations

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Mark is driven to implement the right succession solution for each client's unique situation.

For most clients, Mark becomes a counselor and main point of contact for legal matters. He connects clients with the appropriate resources to assist them with all legal needs.

Experience

BUSINESS SUCCESSION PLANNING

- Advised owners of a manufacturing company on a succession plan that would involve their grown children in the company and utilize compensation structures to align the interests of non-family management with the interests of the family.
- Developed succession plan for a mechanical contracting business that guaranteed financial security for owner, permitted substantial tax-favored gifts to her children and ensured the company's continued independence.
- Identified an ESOP company buyer for a manufacturing company undergoing succession and structured the sale, which provided liquidity for the existing owners of the company and provided an ownership opportunity for the company's valued employees.
- Structured a two-step sale of an entertainment company to an ESOP and sale/leaseback of real estate with a real estate investment trust (REIT) as part of a business succession plan. The sale resulted in $45 million additional profit for owners over the expected fair market value of the company.

EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

- Mark did his first ESOP transaction in 1986 and has worked on more than 100 ESOP deals since then.
- Engineered the first 100% ESOP-owned casino transaction in the United States.
- Represented a cooperative grocery store wholesaler, helping it engineer the sale of a retail subsidiary to an employee stock ownership plan created for the sub and a long-term supply contract between our client and the sub. The sub became an S corporation, so the ESOP structure enabled it to avoid paying any income taxes.

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Experience

- Negotiated with Internal Revenue Service (IRS) for relief from more than $100 million of potential excise taxes and penalties related to ESOP transactions.
- Represented national architectural firm in complete conversion to a 100 percent ESOP-owned company.
- Advised leading international engineering firm on conversion to 100 percent ESOP-owned S corporation.
- Designed transition of nationally recognized professional services firm from 100% ESOP ownership to 100% management ownership in tax favored manner.
- Represented 100% ESOP-owned in-bound call center in auction and sale of company, and designed termination and liquidation of ESOP.

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

- Designed and drafted management incentive programs for most of our ESOP clients, including phantom stock, restricted stock, stock options, stock appreciation rights, and metric-based deferred bonus programs.

OTHER

- Negotiated with Department of Labor (DOL) for relief from about $30 million of potential penalties related to multiple-employer health plan.
- Advised principal shareholder in sale of marketing company AKQA for $600 million to the world's largest advertising company.
- Advised institutional trustee regarding Employee Retirement Income Security Act (ERISA) fiduciary duties related to inadequate trading volume to place participant-ordered trades.

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Recognition

- *The Best Lawyers in America®*
  - Employee Benefits (ERISA) Law, 1995-2027
  - Best Lawyers® Employee Benefits (ERISA) Law "Lawyer of the Year," Kansas City, 2014
- *Chambers USA,*
  - Labor & Employment Law, 2008-2009, 2011-2016
  - Employee Benefits & Executive Compensation, 2024-2026
- Martindale-Hubbell AV Preeminent
- Missouri & Kansas Super Lawyers, Employee Benefits/ERISA, 2005-2012, 2017-2021

Education

- J.D., Drake Law School
  - Order of the Coif
  - *Drake Law Review*, Note and Comment editor, 1983-1984
- B.S., Drake University
  - *summa cum laude*

Admissions

- Missouri
- Iowa



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