

Estate Planning

Providing for the Future of Your Business

By Nancy Chillag, Chillag & Associates

Estate planning usually involves drafting a will and maybe a trust, depending upon the size of the estate. If you are self-employed, the planning will need to be more extensive if you want to preserve the value of your business for your heirs or simply protect your family from lawsuits associated with your business.

All the details of the business are mainly in their heads. When the owner dies, so does the information in their head.

The surviving spouse, children or other relative designated to handle the estate walks into what they term a "disaster." A more sophisticated executor of an estate may hire someone to come in and sort out the paperwork, but by that time there are usually several weeks or even months of delay.

This could mean lawsuits for breach of contract or serious liability for the business. Liability does not automatically end on death!

Most trusts and wills have

standard provisions which allow the executor/trustee to take over any existing business of the deceased. The reality is that most executors just try to wind down the business.

They gather up the equipment from the business and sell it in what amounts to a garage sale at far below true value. And then they quietly close the doors. You,

however, can do some planning in advance to make the outcome more beneficial.

Organize your documents.

While this can seem an insurmountable task, if your executor can't figure out the current status of your business, he can't continue to run it and complete the contracts or sell it.

Find a substitute. Find someone in the same field that you know and that meets your level of quality of work and ethics. Talk to them about their willingness to assist in finishing your contracts in the event of your death.



Train an employee. Having one of your employees know the status of the projects at all times will make it easier for your executor to run the business until a sale can occur.

Inventory your tools and equipment. If the executor does not know what you own they are unable to collect it for use in the continuation of your projects or for ultimate sale.

Plan for a sale. Most self-employed people believe that their business has no value if they are not running it. If you are close to retirement or thinking of "slowing down," seriously consider bringing a new person on board.

Arrange a deal whereby they work for you for a certain period of time so that you can properly train them. Afterwards, you transfer a percentage interest in the company to them over time. If you die in the interim, the entire company transfers to this person in exchange for either cash or a promissory note. All your executor needs to do is complete the paperwork for the sale.

Nancy Chillag is an attorney, certified public accountant and real estate broker. Nancy has practiced law for over 20 years and is the founder of Chillag & Associates, a Menlo Park law firm. She can be reached at 650-321-6796 or visit her website at www.chillag.com.

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