



# Estate Planning Considerations for Business Owners

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Business owners continue to operate in a highly competitive and demanding marketplace. Careful thought and planning are required to deal with payroll and cash flow concerns, the implementation of technological advances, and the ever-increasing demand for the instantaneous delivery of goods and services. However, while due consideration is given to these issues, business owners often fail to consider how they and their families can benefit from the implementation of a comprehensive estate plan and the impediments, delays, costs, and roadblocks that they may face without a comprehensive estate plan. Such considerations should include, but are not limited to the following:

## **Establishment of a Revocable Trust**

A Revocable Trust allows your survivors to avoid the probate process, which can be costly, time-consuming, and open to the public. Using a Revocable Trust may also ensure that your assets will be used for the benefit of your children or other beneficiaries and that your assets are not distributed directly to your children at too early an age. Certain types of Revocable Trusts also permit married couples with significant wealth to minimize or eliminate federal estate taxes.

## **Transfer of Business Ownership Interests into a Revocable Trust**

Transferring business ownership interests into a Revocable Trust not only ensures that your interests will avoid probate, but also ensures that the named successor trustee will have the power to continue to operate the business or to sell the business without any delay or probate court involvement.

## **Implementation of a Buy-Sell Agreement**

When a business has more than one owner, the owners should implement a buy-sell agreement, also known as a buyout agreement. A buy-sell agreement generally sets forth the rights and obligations of the owners and the company regarding the disposition of an owner's interest in the business in the event of death, incapacity and/or retirement, and allows the business to continue to operate upon the occurrence of any of those events.

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## Proper Coordination of Beneficiary Designations with Overall Estate Plan

An often overlooked aspect of estate planning is the proper designation of beneficiaries for life insurance, annuities, Individual Retirement Accounts (“IRAs”), employer-sponsored retirement plans such as 401(k)s, and similar assets. These assets pass to your named beneficiaries pursuant to the beneficiary designation on record with the financial institution. You should review your beneficiary designations approximately every three years or sooner if there is a major life event, such as divorce or the death of a named beneficiary, in order to ensure that they are properly coordinated with your overall estate plan and to avoid severe income tax consequences that may result if there is an improper beneficiary designation.

## Making Charitable Contributions from Tax-Deferred IRAs

Recent legislation signed by President Obama now permanently allows individuals over the age of 70-1/2 to transfer up to a total of \$100,000 per year from their tax-deferred IRAs directly to public charities without paying any income taxes on the amount withdrawn from the IRA. This type of charitable contribution will be counted toward the satisfaction of the minimum required distribution in the year of contribution. This type of charitable contribution, however, may not be made from employer-sponsored retirement plans, such as 401(k)s or profit-sharing plans. In addition, there are no income tax advantages in making this type of charitable contribution from a Roth IRA, since there is no income tax liability when taking a withdrawal from a Roth IRA, and further, since there are no minimum required distribution requirements for the owner of a Roth IRA.

By having certain documents prepared in advance, you can ensure that the right people will be in place to continue to operate the business and generate income for you and your family or to maximize the value of the business in the event that a sale is necessary. In addition to a Revocable Trust and a buy-sell agreement, the “business” component of your estate plan should include the following documents (however, this is not a comprehensive list of all of the estate planning options available):

- A financial Durable General Power of Attorney, which allows you to name someone to handle your financial

affairs in the event of incapacity without having to go to the Probate Court to obtain a financial guardianship.

- A Will, which is the document whereby you name someone to administer your estate, including business ownership interests to the extent that these interests have not been transferred into your Revocable Trust during your lifetime. Your Will should arm your Executor with the power to protect and preserve business ownership interests.

In addition, the “non-business” component of your estate plan should include the following documents:

- An Advance Directive, which now contains two sections, a Durable Power of Attorney for Health Care and a Living Will. The Durable Power of Attorney for Health Care is designed to allow you to name someone to make medical decisions for you if you become unable to do so for yourself, whether temporarily or permanently. The Living Will is a statement that you wish to have artificial life-sustaining procedures withdrawn under certain circumstances.
- A Nomination of Guardian Form, which allows you to designate, in advance, the person who you would wish to be your guardian if it becomes necessary to obtain a guardianship through the Probate Court. Although the purpose of having Durable Powers of Attorney in place (both financial and health care) is to avoid the necessity of a guardianship, under some circumstances a formal guardianship does become necessary, in which case you will want to let the Probate Court know your wishes.
- A HIPAA Authorization Form, which allows you to preauthorize certain people to obtain needed information about your health care and treatment from your medical providers.

If you are a business owner, it is never too soon to review your estate plan or to implement an estate plan if you do not have one. Please contact a member of our Trusts and Estates Practice Group to schedule a meeting to review and update your existing estate plan or to discuss the implementation of a comprehensive estate plan.

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