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Inside this issue:

Form Documents- To Use or Not to Use? 1

Business Succession Planning: Planning for the Expected 2

Notice 2

Client Bulletin



Volume XXXI, No. 9

November 30, 2014

Form Documents—To Use or Not to Use?

An old friend, Jane*, texted me last Friday night and asked me to notarize her Last Will & Testament. We were having a hard time coordinating a time for her to stop over that evening. It probably would have been easier to talk on the phone and have live human interaction, but I suppose neither of us wanted to take that step...twenty texts later I learned that she was 1) leaving for Florida at the crack of dawn...the next morning and 2) she printed the Will off of a generic website on the Internet. Being the good friend that I am, I told her that I would be happy to take a look at it before she signs it. She agreed and so I grabbed my red pen and went to town. Unfortunately, there was three times as much red ink as black!

I called Jane up immediately and asked her if she understood that she left all of her money to her 7 year-old son with no mention of her adopted daughter or husband anywhere? I pointed out that the Will did not contain a provision appointing an executor or one that provides for a guardian for her children. She sounded a little sheepish and admitted that they just used the first form document that they found after a quick Google search.

This scenario illustrates the epidemic of “I’ll just get it from the Internet and save some money” Syndrome. I am not saying that you may never use form documents under any situation – do NOT misunderstand me! Form documents are sometimes a place to give you good ideas to think about. They can also be a good starting place upon which to build a more well thought out document. But that is about where my positive comments end. A legal document cannot *only* be a fill-in-the-blank, connect the dots. Form documents are often:

- full of typos, grammatical issues
- missing key provisions that only a lawyer may catch (e.g., my friend’s Will made no mention of an executor)
- unable to handle the unique needs of each individual client

Having said all of that, we do have form documents for other advanced directives that we use in estate planning. (Stay tuned for next week’s article for more on that!) Yet, even when the attorney is the one giving you a “fill in the blank” document, he/she needs to explain what you are completing, particularly in estate planning. These are major life issues that deserve careful attention.

Elizabeth A. Miceli, Esq.

Business Succession Planning: Planning for the Expected

As the saying goes, “there are only two things that are certain in this world: life and death.” We also know that there is a good chance of wanting to retire sometime down the line, or at least cut back our current workload. These end of career/life issues are never *fun* to think about when your whole world has revolved around your business for so long; yet, the planning we do today is part of the legacy we leave tomorrow.

For those of you who own your own business, think about whether it will survive when you retire or if you die unexpectedly. If you are not sure, or if your plan is not formally written, then it is wise for you to implement a formal business succession plan. Business succession planning is the process of determining how, and to whom, you are going to transfer your ownership interest and then how you will transition out of a management role. Proper planning can avoid the uncertainty that may be looming if proper planning is not done. The following list outlines several issues to think about with respect to business succession planning:

Timing – At what age do you want to retire? Do you want to phase out of management or do you want to continue to have decision-making power even after your equity ownership is transferred/sold? What happens in the event of your disability or untimely death?

Successors – Who will take over for you – an in-house employee(s), a newcomer(s), family member(s), etc.? How will a non-family member successor affect your family dynamics? Does this person have the proper skills and interest to fill your shoes? Can this person afford to buy your ownership interest outright, or do you need to consider possibly helping him/her fund through equity sharing or a seller-financing plan? Will customers want to stay with this new owner? How can you smoothly transition customers over to the successor?

Assets – Is there enough liquidity to keep the business afloat should something unexpected happen to you? What assets are included in the sale/transfer? The business should be valued based on the finances and, among other things, ownership of intellectual property, contacts, and goodwill. A proper business valuation should also reflect the formula used to determine the stated value.

These are just a few of the issues to think about with respect to business succession planning. Be sure to consult an attorney, tax advisor, investment manager, and insurance agent *before* implementing any strategy. Call Steve Martin, Andy Wecker, or Elizabeth Miceli at (740) 363-1313 to discuss your business succession planning needs.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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