

Business Succession Planning

Wills ▪ Trusts ▪ Powers of Attorney ▪ Health Care

Succession planning is useful for everyone, but is particularly important for business owners that want to integrate their estate planning. Trusts and other tax planning tools can be effective risk-management systems. At the Newburyport, Massachusetts, law firm of Mark J. Guay, P.C., we can help you integrate succession planning with your company ownership in an effort to achieve all your goals.

Purpose

- The general purpose of an effective strategy for succession planning is to:
- choose your heirs,
- avoid probate,
- eliminate or reduce federal estate taxes,
- avoid conservatorship,
- maintain control over your assets,
- maintain flexibility,
- maintain privacy,
- provide for health care and other decisions if you become incapacitated,
- provide for funeral and burial instructions, and
- make the administration of your estate as quick, inexpensive, and as easy as possible for your family.

Preparing For Succession Planning

Succession planning can encompass far more than how you wish your assets to be distributed upon your death. When you prepare to develop a plan with us, you should consider the following questions:

- In a medical emergency, who will make decisions for me if I am unable to speak for myself?
- If I become incapacitated, who will handle my financial matters?
- If I become terminally ill, do I wish to be resuscitated or kept on life support?
- In the event of my death, who will become the guardian of my children?
- How do I wish to have my estate distributed and administered?
- What are the tax consequences of my succession planning documents.

Some Major Estate Law Changes

In 2012 there were major changes enacted in federal and state laws that may considerably affect your succession plan. I am recommending to all my clients to consider taking the time to review them carefully. A brief summary of the changes and other laws that may impact you are as follows:

1. MUPC. A new Massachusetts Uniform Probate Code ("MUPC") went into effect on April 1, 2012. The new law affects all wills and probate procedures. THIS IS A MAJOR ACT. For example, laws addressing such things as omitted issue, disinheritance, timing of trusts, tax apportionments, marriage, anti-lapse clauses, ademption, etc. have all changed and the powers of the Personal Representative [(k/a testator) have been updated and expanded with 27 specific powers listed. There are many more areas that we should discuss regarding your succession plan.

2. MUTC. The Massachusetts Uniform Trust Code (“MUTC”) went into effect on July 8, 2012. It affects all trusts in this state. Some newer constructs are as follows:

- "Non-Judicial Settlement Agreements" that encourages settlements without court intervention provided the terms are legal (e.g., trust interpretation, approval of accounts, trustees liability, etc.)
- "Virtual Representation" that allows a guardian to represent a ward (or protected person if no custodian), and a parent to represent a minor (or unborn child) if no guardian/conservator is appointed. A person with a substantially identical interest can also represent minors, etc. provided there is no conflict of interest.
- A creditor's claims framework for trust spendthrift provisions.
- A new conflict of interest section that defines the duty to administer the trust, duty of loyalty, duty of impartiality, duty of prudent administration, and delegation of duties. It also includes rules for administration costs, powers to direct, protection of assets, recordkeeping, duty to inform and report, accounting, etc.

3. Homesteads. The Massachusetts Homestead Legislation became effective on March 16, 2011 and includes many more expanded features, including homesteads for real estate in trust. We recommend every homeowner file a declaration of homestead, if possible. There are several different types so we need to find the right one that fits your facts and circumstances.

4. Durable Power of Attorney and Health Care Proxy. On July 1, 2009, the Massachusetts Uniform Probate Code (“MUPC”) became effective in Massachusetts for a Durable Power of Attorney so your document should be reviewed, updated and re-executed if needed. Laws have also changed that affect your health care proxy as well so we should review it, especially if you have a business.