

ELDER LAW *Update*

NEWS AND IMPORTANT INFORMATION FOR SENIORS AND THEIR FAMILIES



Preserving Your Legacy: What Entrepreneurs Should Know About Estate Planning

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Many entrepreneurs refer to their business as their “baby” and rightfully so. Like a child, entrepreneurs nurture their business from an idea through conception, to growth, and maturity. Running a business is much like raising a child. Both require a lot of time, tears, resources, and effort to be successful. People often prepare for what would happen to their children in the event they pass away unexpectedly, however, they don’t necessarily consider what would happen to their business – and how that would affect their family. While it can be scary to consider, life is uncertain. Creating an effective estate

and succession plan is an ongoing process that will change in each phase of the business’s life.

Business owners pour blood, sweat, and tears into their business, often struggling and making sacrifices for the company to survive, in an attempt to create a legacy that will provide for themselves and their families. But what happens when they are no longer around to run their business? Entrepreneurs should be aware of the unique issues they face when creating an estate plan. They must take action to ensure their business continues on long after they are gone.

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Preserving Your Legacy: What Entrepreneurs Should Know About Estate Planning (CONT.)



Entrepreneurs often think that estate planning and succession goals happen later in life or at maturity of the business. Let's face it, the upkeep of running a business is more than enough to worry about, much less considering one's own mortality in their younger years. In the past, young entrepreneurs and start-up owners were less likely to plan for these things right out of the gate. As we continue to come out of the pandemic, the roles have reversed for the first time in history, allowing 18-34 year olds to take the lead when it comes to creating an estate plan.

Often business owners don't consider what would happen to their "baby" without a leader. What happens after the owner passes away – when the court system ties up the business assets for months or even years until your estate is settled? Or even worse, they hand the business over to an unprepared family member. Without a proper estate and business succession plan in place, these scenarios are entirely likely.

Successful estate and succession planning requires a team of professionals. The team should include an estate planning attorney, accountant, financial planner, and an insurance agent. An important first step in creating the plan is consulting with an estate planning attorney and then ensuring that all of the professionals are in communication with one another in order to accomplish their succession goals.





Moving States and Planning Documents



BY: JOSHUA R. BERZAK

For many reasons, an individual may have to move from one state to another. Whether it be due to employment opportunities or family, a concern that may arise is when an individual has planning documents, such as a Last Will and Testament or a Durable Power of Attorney, prepared under the laws of a state they have since left. When moving states, what planning documents need to be updated?

LAST WILL AND TESTAMENT

In the case of a Will, due to the full faith and credit clause of the United States Constitution, which reads that “full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state”, a Will executed in one (1) state must be honored by another state.

Specifically, as long as the Will meets the requirements of a valid Will and was validly executed under the laws of the state in which it was prepared and executed, then the other states should accept said Will as valid. When the testator passes away, the Court may require the nominated Executor under the “foreign” Will to provide them with an affidavit from an attorney licensed in the state where the Will was prepared to attest that the Will is valid under that state’s law.

For example, if an Arizona resident passes away with a Will prepared under New York law, the nominated Executor under that Will would likely need to obtain an affidavit from an attorney licensed to practice in the state of New York, preferably the attorney draftsman, to attest that the Will is valid under New York law. Similarly, Trusts will be honored in all states.

DURABLE POWER OF ATTORNEY

While the same should be true for Durable Powers of Attorney and Healthcare Proxies, sometimes financial institutions, banks, medical professionals, and health care institutions may not accept documents that they are not familiar with. They may not be willing to risk accepting a document that they are not sure is valid.

Reciprocity becomes a bigger issue for Durable Powers of Attorney and Healthcare Proxies where the execution requirements differ between the states in question. Every state has its own law governing the creation and use of a valid Durable Power of Attorney and Healthcare Proxy.

The Uniform Power of Attorney Act of 2006 was intended to resolve this issue and eliminate differences between various state’s laws regarding Powers of Attorney. However, only twenty-nine states have enacted the Uniform Power of Attorney Act of 2006—New York not being among them. Where the Uniform Power of Attorney Act of 2006 is not enacted, a Durable Power of Attorney whose execution requirements are different from those in the state it is being used may be rejected. Accordingly, it may make sense for an individual to have valid Durable Powers of Attorney in all states that they regularly travel to or transact business in, or in the case of a person permanently switching residences the individual should have a Durable Power of Attorney re-done in their new residence state.

GUARDIANSHIPS

Guardianships provide a different conundrum. A guardian of an incapacitated individual is court-appointed and commissioned under the jurisdiction of the courts in the state where the incapacitated individual resides. If the guardian is attempting to move their ward to another state, the court in which the guardianship was commissioned no longer has jurisdiction of the incapacitated person. Accordingly, the guardian must initiate a proceeding in the state where the ward is being moved to transfer the guardianship proceeding to the courts in that state.

Moving from one state to another can complicate your estate plan and advanced directives. When a move across states happens, be sure you are prepared and update your planning documents. Start by seeking an experienced estate planning and elder law attorney to ensure your wishes remain intact as you cross state lines. Contact us today to learn more.



5 Estate Planning Tips for LGBT Individuals



BY: LAUREN E. SOULE

Although each individual or family engaging in estate planning is unique, most have common concerns: living out the remainder of their lives with dignity and making sure their families are provided for after they are gone. However, if an individual or their family has been historically discriminated against or made to feel unsafe, those concerns hit a bit differently. Thus, here are 5 estate planning tips for LGBT individuals and their families.

FEEL CONFIDENT WHEN YOU ENGAGE WITH YOUR ATTORNEY BY KNOWING YOUR RIGHTS

Clients have the right to confidentiality, competency, and zealous representation from their New York attorneys. Attorneys who breach any of these ethical duties are subject to sanction and/or punishment, up to and including the revocation of their license to practice law.

CHOOSE AN ATTORNEY THAT YOU TRUST, AND TALK OPENLY AND HONESTLY WITH THEM

Your estate plan is only as good as the information you provide your attorney. If you don't feel comfortable talking to your attorney about who you are and who your loved ones are, find a new attorney, because otherwise, your planning will not meet your needs.

HAVE AN ATTORNEY PREPARE YOUR ADVANCE DIRECTIVES

Advance directives allow you to select the person or persons who you want to make health care and financial decisions for you, as well as the person who will handle your funeral and burial arrangements.

Without these documents in place, you have no control over who may be asked to make these decisions for you – and the default is often a parent or sibling if you are not legally married. In order to prevent any scenario in which someone you wouldn't want handling your affairs becomes the one empowered to do so, have a competent attorney prepare these documents.

CONSIDER IF YOU SHOULD PLAN TO AVOID PROBATE

Probate is the court-supervised process of gathering and distributing an individual's possessions and assets after their death. New York probate is based on the notion that families are made up of individuals related only by blood, marriage, or formal adoption. For many LGBT individuals and their families, this is problematic on many levels, as their families are statistically more likely to include individuals they are not considered legally related to.

Additionally, New York requires that certain individuals related to a deceased individual by blood, marriage, or formal adoption must be notified of the beginning of the probate process. These individuals may be able to contest the deceased individual's will and prevent possessions and assets from being distributed in accordance with the deceased individual's wishes.

However, options are available to help avoid probate, and your estate planning attorney should go over them with you in detail.

DISCUSS OPTIONS FOR PLANNING FOR LONG-TERM CARE

Many LGBT individuals and their families may be especially anxious about what will happen if they need long-term care in the form of a home health aide or a nursing home. Discuss this anxiety and all of your options with your attorney, so they can identify strategies that will help put you in the best position to live out your life as you wish.

These 5 estate planning tips for LGBT individuals and their families are a good starting point. As always, the experienced team of attorneys at the Russo Law Group, P.C. can help. Contact us today.