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INTERFACING YOUR BUSINESS AND ESTATE PLANNING

By Lee R. Phillips, JD

One of the big hurdles in estate planning and business structuring is interfacing the business structure and the living revocable trust. The attorney that sets up your LLC or corporation probably won't pay attention to the estate plan, and the estate planning attorney just brushes off the business.

Your business may be rehabbing houses, buying notes, or selling flowers. It doesn't matter what you are doing in your business. Your business is possibly your biggest asset. In spite of what some may say, I believe you "made it" yourself. You spent your life working to build your business, and unfortunately, most businesses don't survive the death of the founder, aka YOU.

If something should happen to you, one of the biggest hurdles is getting "authority" for someone to get right in and "run" the business. If the business gets caught in the probate process, it's a mess, and it may take years or at least months to

emerge from the grasp of the lawyers and courts.

I have pounded on my clients and students to get them to use their living revocable trust

and make sure all of their assets are held in the trust. If you don't have your living revocable trust yet, I need to encourage you (or shame you if necessary) to do whatever it takes to get it done. Once you've got your trust, you have to go about making sure the trust "owns" all of the assets that require your signature to transfer.



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ARE YOU RESPONSIBLE FOR YOUR PARENTS' CREDIT CARD DEBT?

By Kristy S. Phillips, JD

I was talking with my mom the other day when she made the comment that she hoped that they had enough to support themselves for the rest of their lives. Like everyone else, they have been hurt by the "three year recession" that the US is experiencing. This recession has been particularly hard on those living on fixed incomes, because returns on their investments have become so small that they must dig into the principal.

Mom continued by saying, "I had always hoped to leave you kids a legacy, but I am afraid

that is not going to happen." I could tell by the tone in her voice that she felt devastated. My dad has always been a good provider and I am sure this is difficult for both of them. With the economy in shambles, my parents are faced with a decreasing home value, dwindling retirement savings, and inflation on the basic commodities they need to live. They are not alone. The sad truth is that older Americans are racking up serious debt.

Debt among Americans between the ages of 65 and 74 is growing faster than for any



other age group. The latest figures available from the Federal Reserve, show the median debt level of that age group was \$40,130—up from \$27,458 in

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INTERFACING YOUR BUSINESS AND ESTATE PLANNING, CONT.

If you're dead, it becomes more difficult to get you to sign your name. Your family can't sign your name, without a probate order. Thus, the probate. Your business is an asset that requires your signature to sell, operate, or close down. Thus, the business needs to be "owned" by your living revocable trust.

That's where people stall and freeze like a deer in the headlights. What do I do? Well, let's answer that question and take you through it step by step.

Stock or Membership Interests

When you establish a corporation or an LLC, you should file the papers with the state (articles of incorporation for a corporation or articles of organization for an LLC). Then you need to establish ownership of your company. If you have a corporation, you issue stock certificates. If it is an LLC, you issue certificates of membership interest.

The stock certificate is always going to show that you own a specific number of shares. It really doesn't matter how many shares. If you own all the shares you own the company. If you own half the shares you own half the company, and so on. The value of the shares will be established by dividing the total worth of the company by the number of shares.

I recommend that you keep the number of shares "down." You could have one share in Berkshire Hathaway at \$128,000 per share, or you could have ten trillion shares in the XYZ Company, and still have the same value. There is one caveat. Some states charge a tax if the corporation authorizes above a set number of

shares, so don't go the trillion share route.

LLCs have certificates of membership interest. They look like a stock certificate, only the wording on the face is a little different. Depending upon which state you are in, the membership interests can be divided up by assigning a specific number of membership interests to each company owner, or the interests can be divided up by percentage ownership of the company. There again, the wording will change a little on the membership certificates.

Have You Failed Already?

If you are like the 90% of people whose corporation or LLC fails to protect them when there is trouble in the company, you didn't actually ever issue stock certificates or membership interest certificates. Showing who owns the business on the records of the company is one of the criteria the courts look at to determine whether or not they are going to "pierce the corporate veil." Once the veil is gone, you're a sitting duck - a naked sitting duck in your creditor's scope.

Assuming you haven't actually issued stock or certificates, you need to do that. Note that corporations and LLCs use different language so you can tell which one you are talking about.

To physically issue certificates or stock, get a blank stock or certificate form and a ledger. You can get the paperwork at the office supply store. It will be ten or twenty dollars. Or you can just email Candy in the office at Candy@LegaLees.com. Just put "need certificates and ledger" in the subject line. We will send you an electronic copy.

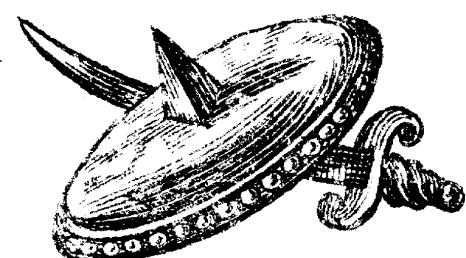


Get the ledger and issue certificate #1. You will put your name in the ledger column, if you want it in your name, or you will put your living revocable trust's name in the ledger column, if you want it to be held in the name of your trust. Then you will put the value of the certificate in the number of shares or the number of membership interests. You could have the membership interests worded as a percentage of the LLC.

In order to uphold the "formalities" of your company and keep the corporate shield in place, you need to issue the certificates (stock or membership). That's an issue independent of probate and survival of the business at the death of the owner. Remember, the corporate shield is the same whether you have a corporation (C or S) or an LLC no matter how it is taxed.

If you already have issued stock or membership interests, CONGRATULATIONS! Now you need to change the ownership to your trust—out of your name.

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INTERFACING YOUR BUSINESS AND ESTATE PLANNING , CONT.

Simply, get the ledger and note which certificate you have issued that you want to reissue in the name of your trust.

There will be a date entry for surrender or cancellation of the certificate. Enter the date the certificate was surrendered, and then simply issue another certificate. If you surrendered certificate #1, you will not reissue certificate #1. You will reissue another certificate, say certificate #4. Fill out the ledger and the certificate in the name of your trust.

Remember the trust has three parts to the name: (1) the name of the trust – BIG RED TRUST, (2) Date of the trust – Under Agreement 1/22/2010 or U/A 1/22/2010, (3) John Doe (your name) Trustee or John Doe TTEE.

If You Have an S Corporation Taxation Structure

S corporations (either a corporation taxed under subchapter S of the IRS Code or an LLC taxed under subchapter S of the IRS Code) cannot be owned by just any trust. If the trust doesn't meet the

criteria of a "subchapter S qualified trust," then the IRS will reclassify your company as a C corporation tax structure.

The living revocable trusts I have in the Legalees Accumulation and Preservation of Wealth sets do qualify, so don't worry about that. If you are using another version of a living revocable trust, know that many of them don't qualify, so you may have to amend your trust. If that's your situation, give me a call, and I will help review your trust to see if it meets the criteria.

Taxation of your corporation or LLC will affect the interface options with your living revocable trust, but remember it will not have any affect

on the asset protection you get out of your structure. Taxation and asset protection in your company are independent issues.

It doesn't take long to get the certificates and ledgers, and it will take about 15 minutes to issue or change the certificates of ownership for your company. Just do it! This is a critical issue for asset protection and the survival of your company when you or the owner dies. That owner may be your "partner" and you may be the one trying to operate the business when it is stuck in probate court trying to clear your partner's ownership. Don't forget to make sure that all of the "partners" get their estate

plan in place and then inter-

Remember
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the name: (1)
the name of
the trust –
BIG RED
TRUST, (2)
Date of the
trust – Under
Agreement
1/22/2010
or U/A
1/22/2010,
(3) John Doe
(your name)
Trustee or
John Doe
TTEE.



face it with the business. ■

ARE YOU RESPONSIBLE FOR YOUR PARENTS' CREDIT CARD DEBT? CONT.

2004. Strategic Business Insights' Macromonitor conducted a survey and established that Americans 75 and older carried an average of \$7,200 in credit card debt in 2010—triple the level in 2008.

I read an article the other day called "How Do You Deal with Your Parent's Debt." It indicated that if your parents didn't have a will, then you would not have to go to pro-

bate and you would not be responsible to pay their debts. I can see how the reporter put a limited knowledge of the law together and came up with this conclusion. The sad truth is that the reporter is wrong. Whether your parents have a will or not, if your parents have property that needs to be sold after they die, you will have to go to probate to clear the deed whether or not

there is a will.

I was worried that older folks would see this article and avoid doing their estate planning to help their children get out from under their debts. They might think they could leave a bigger inheritance to their children. Now some of you who are my students and who have paid attention may also be thinking, "Ahh, a trust does not have to go to probate. What if the property is

held in trust?" The reality is that neither of these solutions will work to avoid debt. It is true that nobody in the United States is responsible for the debt of another. However, when someone dies, the law is set up so that you must pay the debts of the decedent before you distribute their estate.

Here are the facts. Let's say

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U S I N G T H E L A W T O M A K E M O N E Y

ARE YOU RESPONSIBLE FOR YOUR PARENTS' CREDIT CARD DEBT? CONT.

your parents owe \$8,527 on their Bank of America credit card. They also own all of their property in a trust. When they die, because of the trust you do not have to go to probate to get control of their assets. But if you don't pay off their debts, any creditor can start a probate proceeding and the judge will require that the estate pay the debt. So, if you (as the executor) don't take action to pay off your parents' debt as part of settling the estate, then Bank of America could file a probate in your parents' name and then the judge could make them the executor of the estate. Can you imagine how awkward it would be to have Bank of America control your parent's estate?



Another piece of information, if your parents or another family member are truly indigent when they die, and they have debt, the debtor cannot come against you to pay the debt.

If you really want to help your parents save some serious money in their estate, the best thing you can do is to educate them on the importance of holding their property in a trust. At least

by doing that, they'll save probate expenses. If discussing estate planning or trusts is a difficult topic for you to bring up with your parents, you can give them a copy of my book, *Protecting Your Financial Future*. It is written in an easy-to-understand, storytelling approach that inspires people who read it to get their affairs in order.

The trust will not only help your parents avoid the cost of probate, but if they are in a high enough tax bracket, it can also be used as an estate tax planning vehicle. Whether or not your parents decide to use a trust in their estate planning, they need to understand that there is no way around paying off their credit cards after their death.