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The Law Office Of Robert L. Boydstun

LAWYER FOR Life

Keeping Your Family Healthy, Wealthy & Wise

In This Issue:

Choosing A Trustee For Your Special Needs Trust

Choosing the right trustee for any trust is a difficult and extremely important decision. In the case of choosing the right trustee for the trust you have created to protect your loved one with special needs, the decision is even more important—particularly if your loved one is a young child. Let's take a look at some of the options and discuss the pros and cons of each.

Your Parents

Many couples consider this first. After all, your parents know and love your children, and understand your wishes. However, this is only a temporary solution, as your special needs trust must protect your loved one with special needs for his or her entire lifetime.

Your Siblings

Like your parents, this may be a good temporary solution. But the same drawback applies here as well. Your siblings are unlikely to outlast the trust itself, and you will need a successor trustee.

Your Other Children

This option seems logical to many couples because their children know one another well and are roughly the same age. However, you must consider a number of factors with this option. First, the role of trustee is a difficult one, fraught with potential liability. Do your other children have the time and capacity to serve as trustee? Then you need to consider the dynamics of your family. Should all of your children be named as co-trustees, or should only one of them be named as sole trustee, and how will this impact the relationship between family members. That is, will you be perceived as "playing favorites?"

(cont.)

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Choosing A Trustee For Your Special Needs Trust (cont.)

A Bank or Trust Company

Most banks, brokerage houses and trust companies will only accept large trusts, ranging from a minimum of $300,000 to more than $1,000,000. Many will not accept special needs trusts at all. However, if you have a special needs trust that meets the institution's minimum requirements, and the institution's trust department has an outstanding reputation, this may be a long-term option worth considering.

As you can see, there are a variety of options, each of which has advantages and disadvantages. Sometimes, the best choice is a combination of one or more options. We are here to guide you through the various options and help you choose the trustee, or combination of temporary trustee and successor trustee, best suited to your particular situation and needs.

Selling Your Business To The Highest Bidder Is Not Necessarily The Best Option

If you own a business and have not put a succession plan in place, you might be thinking that the best choice, when the time comes to retire, is to simply sell your business outright to the highest bidder. However, selling your business to your employees may be a better option in certain situations, through what is known as an Employee Stock Ownership Plan (ESOP).

Here's how an ESOP works. The company in question creates a trust on behalf of its employees. A portion of the profits are directed into the trust, which in turn uses the money to purchase the owners' shares. This purchase can take place over time or all at once. Employees can minimize the potential burden of the purchase by borrowing against future earnings, without incurring costs upfront.

How prevalent is the use of ESOPs in business transitions? There are currently more than 10,000 companies successfully using ESOPs. These companies include well-known, large firms, as well as smaller companies.

The decision to use this succession strategy depends on a variety of factors. For example, if you are interested in leaving a lasting legacy or rewarding the people who have worked for you over many years, an ESOP could be an excellent way to do so. There can also be tax benefits. If you sell more than 30 percent of the company to your employees, capital gains taxes are deferred, as long as the proceeds are invested in American companies. Furthermore, in companies where employees have a stake in ownership, studies have shown that productivity and profits improve.

Of course, there are risks to this strategy. For example, the long-term value of the firm, and its ultimate selling price, can fluctuate as a result of changes in the business, the economy and more. Nevertheless, for business owners looking to leave a legacy, reward employee loyalty, and reap tax benefits in the process, selling to employees could very well be an excellent option—a satisfying reward for taking the risks and putting in the hours necessary to build a successful business.

Protecting a Child's Inheritance

A number of our clients have expressed concern about protecting the inheritances of their children. Sometimes, they worry about the security of a child's job, and what will happen if he or she loses that job in a tough economy, cannot pay bills, and loses the inheritance to creditors. Other times, they worry about the influence sons or daughters-in-law have over their children, and what would happen if their child got divorced. Some parents wonder if their children are mature enough to handle an inheritance and if they can make sound, long-term decisions on their own. Fortunately, there are a number of ways for you to leave an inheritance to your children and protect that inheritance against threats such as these and more.

In addition to their ability to avoid probate and minimize estate taxes, trusts are some of the most effective tools to protect your children's inheritances. Here are a few examples.

Discretionary Trusts

With these types of trusts:

- The trustee has complete discretion to determine trust distributions and the beneficiary cannot demand distributions
- The settlor of the trust can provide guidance about distributions and withhold distributions if a child is facing divorce, bankruptcy and/or personal problems that may impact his or her ability to manage the inheritance wisely
- Creditors cannot access trust assets

Support Trusts

- The trustee is required to make distributions for health, education, support, or maintenance to the beneficiary if so desired by the beneficiary
- Only certain creditors, known as "super creditors," can access the trust assets. Examples include child support/alimony payments, claims for services that "protected, preserved or enhanced the beneficiary's interest," and state/federal government debts such as tax liens

Spendthrift Trusts

These trusts prevent the beneficiary from voluntarily or involuntarily transferring his or interest in the trust and protect trust assets from most creditors, excluding the super creditors described above.

If you are concerned about protecting your children's inheritance against threats posed by creditors, predators, or even their own poor decisions, we can structure your estate plan to provide the level of protection ideal for your particular situation.

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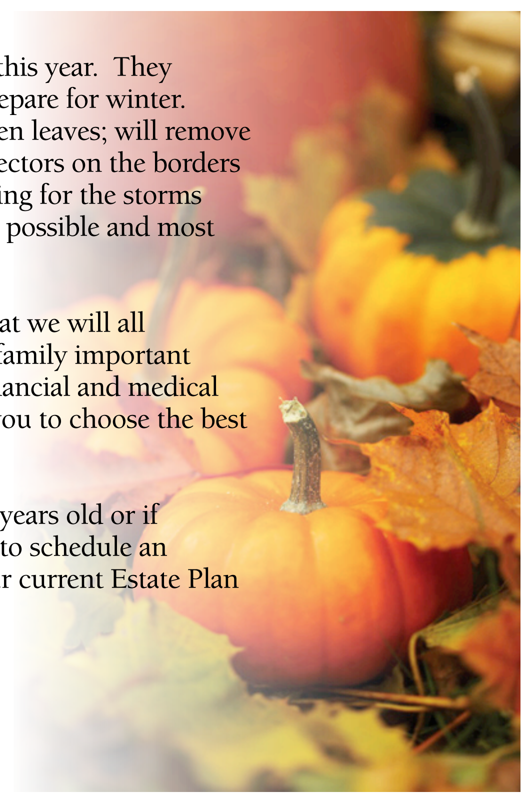
A Personal Note From Robert Boydstun



The colorful fall foliage and crisp, cool temperatures are so lovely again this year. They remind us that another year is drawing to a close and that we need to prepare for winter. Many of us will make sure that our roof gutters have been cleared of fallen leaves; will remove window air conditioners; inspect and clean our furnaces and put up reflectors on the borders of our driveways. We perform these tasks because we know that preparing for the storms to come provides us with a better chance of weathering them in the best possible and most comfortable manner.

We should also prepare for the storms of illness, incapacity and death that we will all eventually face. A Power of Attorney and Health Care Proxy offer your family important protection. They provide a way for you to give directions now for the financial and medical issues that may arise later. A Will or Trust based Estate Plan will allow you to choose the best means to transfer your wealth to your family and cherished causes.

If you do not have an Estate Plan, if your Estate Plan is more than a few years old or if your assets have changed since you created your Estate Plan, please call to schedule an appointment to discuss your goals and values and to make sure that your current Estate Plan is aligned with them.

I wish all of you all a truly wonderful and loving Thanksgiving holiday.

Robert Boydstun