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Estate planning for business owners: When wills meet buy-sell agreements

For business owners, estate planning can be particularly complex. While many people assume that a will can dictate exactly what happens to their assets, that isn't always the case when it comes to business interests.

As highlighted by the recent ruling in *Pappas v. B & G Holding Co.*, a buy-sell agreement or transfer restriction in a company's governing documents can override a testamentary bequest.

William Egan, a 50 percent partner in B & G Holding Co., attempted to bequeath his partnership interest to Dean George Pappas through his will. However, the bequest directly conflicted with the partnership agreement he had signed years earlier.

The agreement, dating back to 1994, prohibited partners from transferring their interests except in accordance with its terms and included a buy-sell provision triggered upon a partner's death. The provision gave the surviving partner the option to purchase the deceased partner's interest.

Despite that agreement, Egan wrote a will in 2009 leaving his partnership interest to Pappas.

Following Egan's death in 2020, the surviving partner, Eugene Leogrande, attempted to exercise the buy-sell option as per the agreement, offering $318,348 for Egan's share based on the buyout formula.

Pappas, however, argued against the valuation method used in the agreement, leading to a protracted legal battle that lasted four years.

Ultimately, the court ruled in favor of Leogrande, upholding the partnership agreement and requiring the sale of Egan's interest as stipulated in the contract.

Advice for business owners

When it comes to owning a business and protecting your assets as part of the estate planning process, here are six important tips for business owners:

1. *Review all existing agreements:* Regularly review your business's governing documents, including partnership, shareholder and operating agreements. Be aware of any transfer restrictions or buy-sell provisions.

2. *Coordinate estate planning with business agreements:* Ensure your estate planning attorney is fully aware of all business agreements. Provide the lawyer with copies of relevant documents to avoid potential conflicts.

3. *Consider updating business agreements:* If your testamentary wishes

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CORREIRA LAW
800-699-5040 | CorreiraLaw.com
20 Park Plaza, Boston, MA, 617.723.5040
20 Cabot Boulevard, Mansfield, MA, 508.991.5040
1010 GAR Highway, Swansea, MA, 508.679.5040
1415 Panther Lane, Naples, FL, 239.649.5040
10 Dorrance Street, Providence, RI, 401.454.5040

SLATs and the 2025 estate tax shift: How to secure today's rates

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Estate planning is about preparing for the future, and right now there's some big uncertainty around what that future holds for estate and gift taxes.

One major reason is the upcoming "sunset" of the 2017 Tax Cuts and Jobs Act (TCJA) at the end of 2025. The "sunset" of a law or provision refers to a built-in expiration date after which the law or provision will no longer be effective unless it is actively renewed or extended by lawmakers.

If Congress doesn't extend these provisions, the current $13.61 million federal estate tax exemption per individual will be cut in half, dropping to roughly $7 million.

This rollback, along with the possibility of additional legislative changes, has some high-net-worth families looking for ways to secure today's tax benefits before they potentially vanish.

One strategy to consider is a Spousal Lifetime Access Trust.

What is a SLAT and how does it work?

A Spousal Lifetime Access Trust, or SLAT, is an irrevocable trust set up by one spouse for the benefit of the other spouse (and potentially other family members, such as children or grandchildren).

The main advantage is that it allows the spouse who creates the trust, known as the grantor, to transfer assets out of their taxable estate, reducing future estate tax liability while still providing indirect access to the assets through their spouse.

Here's how it works:

- *Funding the SLAT:* The grantor transfers assets, such as cash, stocks or a business interest, into the SLAT. Because the trust is irrevocable, the assets are no longer part of the grantor's estate, cutting down on estate taxes.
- *Tax benefits:* If the SLAT is set up before the current higher exemption sunsets, the transferred assets will be protected under today's more favorable limits. That makes it a "use it or lose it" situation since the exemption may decrease significantly in 2025.
- *Spousal access:* Although the assets are no longer in the grantor's estate, the spouse can still benefit from them. The trustee can make distributions to the spouse for things like health, education and living expenses. This setup offers financial flexibility and security while meeting estate tax planning goals.

Potential drawbacks

While SLATs offer several benefits, they aren't without risks:

- *Irrevocability:* Once created, the SLAT can't be undone.
- *Death and divorce risk:* Since the trust benefits the grantor's spouse, divorce would terminate that access. Likewise, if the non-grantor spouse dies first, the grantor spouse loses indirect access to trust assets.
- *Reciprocal trust doctrine:* If both spouses create SLATs for each other, the IRS might treat them as reciprocal trusts, pulling the assets back into their estates. That risk can be managed by structuring the trusts differently.

A SLAT can be a valuable tool for locking in today's tax benefits amid changing laws. Talk to an attorney to determine if a SLAT fits your needs.

What happens to your trademark after you pass away?

When a business owner passes away, there are many assets to consider in their estate.

While physical property and financial accounts are often top of mind, intellectual property such as trademarks can be easily overlooked. However, trademarks can be valuable assets that continue to hold significance long after the owner's death.

Trademarks as property

First, it's important to understand that trademarks are considered intangible property. Like other forms of property, they can be transferred, sold or inherited. When the owner of a trademark dies, the trademark doesn't automatically expire or enter the public domain. Instead, it becomes part of the deceased's estate.

Avoid probate

To ensure a smooth transition, many trademark owners choose to include their intellectual property in their estate plan. That can be done in several ways:

- Will: You can name a specific individual or entity to inherit your trademark in your will. However, since the will goes through probate, this option can result in delays.
- Trust: By putting the trademark in a trust, ownership can transfer immediately upon your death, ensuring continuity for your brand.
- Business ownership: If your trademark is owned by a company rather than an individual, the business itself continues to own the trademark, even after the owner's death. In that case, succession planning for the company's ownership will determine who ultimately controls the trademark.

Transfer of ownership

Once the estate is settled, the trademark will typically transfer to the designated heir or new owner. The transfer must be recorded with the U.S. Patent and

Trademark Office to maintain the trademark's validity and enforceability.

The new owner will need to file an "Assignment of Mark" with the USPTO, pay the required fees, and provide documentation of the transfer of ownership

Maintaining the trademark

Once a trademark is inherited, the new owner must continue using the mark to maintain its protection. Trademarks can last indefinitely, but only if they are actively used in commerce and renewed regularly (typically every 10 years, depending on the jurisdiction). Failing to use the trademark or renew it in time could lead to the loss of rights, leaving the mark vulnerable to cancellation.

Plan for trademark transition

While a trademark doesn't die with its owner, its future depends largely on proper planning and management.

Business owners with valuable trademarks should consult with an attorney to ensure their trademarks are protected and transferred according to their wishes after death.

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conflict with existing business agreements, consider negotiating updates to those agreements when possible. Make sure buy-sell agreements include fair valuation methods for your business interest and clearly outline the process for buying out shares.

4. *Communicate with beneficiaries:* Make sure your intended beneficiaries understand the nature of your business interests and any restrictions that may apply. That can help prevent misunderstandings and potential legal disputes after your death.

5. *Regular reviews:* Both business agreements and estate plans should be reviewed regularly, especially after major life events or changes in business structure.

6. *Consider the consequences:* Understand that attempting to bequeath a restricted business interest may result in that bequest failing, with the interest potentially passing through intestacy laws instead — potentially leaving your intended heir out of the equation.

For business owners, estate planning isn't just about writing a will; it's about making sure all legal documents work together. To avoid conflicts, regularly update your business documents, maintain open communication with co-owners, and get help from an estate planning attorney. With the right approach, you can protect both your legacy and your business's future.

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Correira Law
20 Park Plaza, 4th floor
Boston, MA 02116

When an estate is caught between a dog and a dispute

Estate planning usually focuses on distributing assets such as houses, bank accounts or other belongings after death.

But sometimes, agreements made during life — like in a divorce — can complicate matters, especially when unusual conditions are involved.

A recent Virginia court case shows how complex estate disputes can become when those conditions involve more than just people.

A dog, a property and a legal battle

In *Putnam v. Covington*, Nol and his ex-wife, Susan, co-owned two parcels of land. When they divorced, they signed a property settlement agreement, or PSA, that let Nol live on the land as long as their dog, Jack, was alive. The agreement said once Jack was relocated or passed away, Nol either had to buy out all other interests in the property or sell and distribute the proceeds pro rata.

Things got tricky when Nol died before Jack. Nol's heirs filed a petition for partition to recover the pro rata interests devised to them by his will. Susan, however, opposed the partition and sought to enforce her interim rights under the PSA prior to the land's eventual sale.

The court's ruling

Judge James P. Fisher ruled that Nol's heirs had the right to seek partition of the property. In interpreting the PSA, he found the obligations were a personal agreement between Nol and Susan, not a permanent restriction on the land itself.

And while the PSA granted Susan temporary rights, the judge found those rights were not so "expansive or unreasonable as to frustrate the interests of survivors." As he interpreted it, the intent of the parties was ultimately to divide their interests at some point.

Takeaways for estate planning

The case highlights the importance of clarity in estate planning.

Any agreement should address all potential outcomes, including what happens if someone passes away before certain conditions are met. It's crucial to distinguish between temporary, personal rights (like living on a property) and permanent property restrictions to avoid future disputes.