



BUSINESS OWNERS:

SUCCESSION PLANNING FOR BUSINESS OWNERS – PART II



INTRODUCTION

On September 10, 2024, we published the first of our two-part whitepaper series on Succession Planning for Business Owners, which dealt with succession planning for your business.

In this follow-up we address estate planning for business owners.

As with succession planning for your business, estate planning is an avenue toward the orderly and deliberate path toward a smooth transition of wealth, power, authority, and responsibility to the next generation. Business succession planning deals with the next generation of your business' management, while estate planning concerns the next generation (and potentially more generations to come) of your own family.



SUCCESSION PLANNING FOR YOUR ESTATE

Whether you are a business owner or not, plan for the disposition of your assets and property with the greatest care.

This is vital for everyone, no matter how much or little you will have to leave, but the necessity only becomes more urgent the greater the value of your assets.

It's also vital to ensure you take advantage of the (temporarily) increased estate and gift exemption enacted as part of 2017's Tax Cuts and Jobs Act (TCJA) – the exemption, currently at \$13.61 million per individual and \$27.22 million for married couples filing jointly, is on track to revert to the pre-TCJA levels, adjusted for inflation. For 2026, the estate and gift exemption is currently estimated to be ~\$7 million for each individual and ~\$14 million for married couples.

It is possible that Congress will act to extend the estate and gift exemption provision of the TCJA. However, it is wise to act as if they won't.

In addition, there is the matter of the generation-skipping transfer tax (GSTT). This is of particular note if you have, or intend to, set up your estate plan so that your heirs beyond the next generation will benefit from your hard-earned assets. There is a generation-skipping tax (GST) exemption in the same amount as the estate and gift tax, which is a separate and additional exemption. Beyond the exempted amount, the tax imposed on generation-skipping inherited assets is the maximum rate applied to estates and gifts above the exclusion amount – 40%. This exemption, too, will be cut roughly in half upon the expiration of the TCJA's individual income tax provisions, as of midnight December 31, 2025, absent Congressional action.

Exemption amounts for 2025 will be \$13.99 million per individual and \$27.98 million for married couples filing jointly, so, even if your assets have been planned and distributed to take full advantage of the entirety of current or prior-year exemptions available to you, it will be wise to revisit your estate plan in 2025, to ensure that your estate takes advantage of the fullest possible tax benefits available to you.



YOUR ESTATE PLAN

A well-tailored estate plan:

- Spells out in detail whom you want to leave each and every one of your assets to, whether you want to leave them to your heirs individually or collectively.
- Is tailored to your specific goals, considers the needs of your family, and is structured so that your wishes will be honored insofar as possible – and more is possible in that vein than you may think.
- Is updated regularly – wills, beneficiary designations, powers of attorney (POAs), etc., need to be kept up to date, as people marry, divorce, have more children and/or grandchildren, and as your assets accumulate further. Life always throws us curveballs, too, and as your assets grow, so too your wishes may change. Make sure your estate plan changes together with your life, your goals and wishes, your family, your business, and your assets' value.

To create or revise your estate plan, we recommend you turn first to your virtual CFO or trusted financial advisor – this is a person who knows you, your finances, and can help guide you toward the right vehicles to best ensure your estate and the assets in it are secured for the benefit of your loved ones, and their disposition governed according to your wishes.

Your trusted virtual CFO or financial advisor will, if s/he is on his or her toes, ask to review your estate plan, beneficiary designations, and all particulars proactively, but by all means take the lead when your circumstances change, and ask for that review yourself.

You will also need a trusted estate attorney to help you draft and update your and your spouse's wills, POAs (both durable and medical POAs should be in force at all times, and there can be circumstances under which you may want limited POAs for certain circumstances and time periods), and any trusts you want created.

Further, you will need a carefully maintained Financial & Estate Organizer – either in hard copy, digital, or both.



YOUR FINANCIAL & ESTATE PLANNING ORGANIZER

Here's a what goes into a good financial & estate planning organizer – and it's a blueprint for what, at minimum, you will likely need as a starting point for your estate plan:

- Tables of contents for each section
- Wills
- Powers of Attorney both durable and medical
- Birth certificates
- Marriage (and divorce) certificates
- Property deeds
- Automobile titles
- Financial account statements (bank, investment, retirement)
- Digital asset statements
- Life and disability insurance policies (make sure these include the beneficiary designations)
- Loan and/or mortgage documents
- Personal financial statements (a listing of all assets and liabilities)
- Any licenses or permits (including but not limited to driver's licenses)
- Copies of passports
- A list of your electronic devices (keep passwords for these and online accounts in a separate, secured document – don't include them here)
- Burial and service instructions
- IRA and pension beneficiary designations (these should be included for each account after the appropriate account statement(s))

Like your estate plan, like your wills, POAs and beneficiary designations, your organizer needs to be updated, and more frequently than those documents. Make sure new financial account statements, whether issued monthly or quarterly, are added. If you allow an insurance policy to lapse (e.g., a disability insurance policy may not be needed once you've retired), remove it from both the organizer and the applicable table(s) of contents.



WHEN YOU SHOULD UPDATE YOUR WILL AND ESTATE PLAN

You should review these vital documents at least every year or two, but certainly in the event of:

- The death of a family member or other loved one – whether they are among your listed heirs or not, as the death of someone close often reorders our priorities
- Marriage (or remarriage)
- Divorce
- The birth of a child
- A significant change in your personal net worth
- The purchase or sale of a business



IS A TRUST, OR TRUSTS, A GOOD IDEA?

That depends on a lot of specifics – your family’s needs and circumstances, and the amount of your assets, in addition to your own goals for your family and the uses you wish your assets put to on their behalf.

You may want to set up a trust, or more than one trust:

- If you have a high net worth;
- If you own significant real estate;
- If you want to keep your assets and arrangements private (many trusts enable you to pass your assets on while bypassing the probate process);
- If you have minor children;
- If one or more of your heirs will need long-term care;
- If you have multiple beneficiaries and specific goals as to the protection of each; or
- If you want to make a sizeable contribution, or contributions, to charity.

Trusts come with their own costs, of course – your estate attorney’s legal fees, filing fees for the trust’s tax returns as well as any income tax liabilities incurred by the trust, payments to trustees, etc.



COMMON TRUSTS USED IN ESTATE PLANNING

- **Irrevocable Trust:** Absent a court order, generally speaking, an irrevocable trust cannot be changed once it has been placed in force. The assets you designate will transfer from your own ownership to the trust's; you cannot alter the terms. However, since they are no longer yours, any assets held in an irrevocable trust are shielded from your creditors and not included in your estate; therefore, they are exempt from federal estate taxes.
- **Family Trust:** This can be a revocable trust or an irrevocable trust and is designed to protect your assets in the interests of your family members.
- **“AB” Trust:** This is really two trusts, but they are usually created together. The “A” trust, which is a Marital Trust, is designed to protect your surviving spouse for his or her lifetime. Your surviving spouse must be the sole beneficiary of such a trust for his or her lifetime, though s/he may, after your death, distribute some or all of the trust's assets as s/he sees fit. The trust's designated assets pass to your spouse tax-free, as you can pass any or all of your assets to your spouse without any incurred income tax liabilities. The “B” Trust would benefit your non-spousal heirs – and you can place assets into it shielded from income tax ramifications up to the limit of your estate exemption. The remainder of your assets can pass into the “A” trust for your spouse. This can be further complicated by allowing your spouse the use of the income of certain assets for their lifetime, which is called a usufruct.



OTHER TYPES OF TRUSTS

These may be useful in estate planning, but are less commonly used:

- **Irrevocable Life Insurance Trust (ILIT):** An ILIT is used to preserve the benefits from one or more life insurance policies from inclusion in your estate, making them exempt from federal and state estate taxes. The trust must be in existence before the Life insurance policy or policies is/are placed in force. Another benefit of an ILIT is that, as with other trusts, the insured can choose a manager for the insurance proceeds and specify how those proceeds are to be distributed.
- **Charitable Remainder Trust (CRT):** This type of trust can provide you, as donor to the CRT, or other beneficiaries of your choice, with an income stream during your lifetime, generated by the growth of donated assets held by the trust. At the donor's death, the remaining assets values revert to the designated charity or charities. A Charitable Remainder Annuity Trust (CRAT) will distribute to your or your designated beneficiaries a fixed amount annually – but no contributions can be made beyond the initial donation you've specified. A Charitable Remainder Unitrust (CRUT) will distribute a fixed percentage of the trust's holdings, which are re-evaluated annually – and you can add additional assets to the trust.
- **Dynasty Trust:** A Dynasty Trust is another irrevocable trust – its assets are permanently removed from the grantor's control. What you can control are the terms under which the assets will be managed and distributed. The trust's terms cannot be altered once the trust is funded – so plan carefully. If you are taking the long-dynastic view, and have a very high net worth, a Dynastic Trust may be a good vehicle to plan for your grandchildren's futures.

There is also what is called a Testamentary Trust, but, since this type of trust is instituted to hold some or all of an estate's assets, as outlined in the estate owner's will, it will not be established until after the asset owner's death, and, therefore, the assets will not be excluded from probate proceedings.

When considering a trust, consult carefully with your virtual CFO or other trusted financial advisor, and also with your estate planning attorney – they are invaluable – essential – resources when planning for your estate and your family's future.



OTHER NOTEWORTHY CONSIDERATIONS

In addition to the above, there are additional points to take into account when planning for your estate. These include:

- **Unlimited Spousal Deduction:** Under current law, you can transfer any of your assets, in any amount and at any time, to your spouse during your lifetime entirely free of any federal tax consequences until the death of the recipient spouse – when you and your spouse are both U.S. citizens. If the receiving spouse is not a U.S. citizen, there are annual limitations to such transfers. However, under these circumstances, the donor spouse can set up a domestic trust from which gifts, transfers and bequests can be made. At least one trustee must be a U.S. citizen, and the trust must include a provision that any distribution of principal be subject to that trustee's withholding of any estate tax which may be applicable.
- **Portability Election:** Any unused portion of your own estate exemption (again, this is \$13.61 million per individual for 2024; the 2025 limits will be \$13.99 million per individual) can be transferred to your surviving spouse. S/he can then use that amount in addition to his or her own estate exemption when estate planning. However, to enable this, your estate's executor must file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. This return must be filed within nine months of the decedent's date of death, or the last date covered by any extension of time for filing obtained. The portability election is made automatically when the return is filed, and irrevocable, unless the executor affirmatively states otherwise on the Form 706 tax return.



FAMILY DISCUSSIONS

The one thing you don't want to do with your estate planning is to cause family disharmony. Estate planning should, rather, help you avoid that.

But one thing you need to do on your own (not that you can't take guidance from your advisors on how to do it) is to talk to your family.

In fact, we recommend that you have at least two-family meetings about your estate plans.

The first should be held when you've done no more than, at a maximum, put wills, POAs, life insurance, if any, and possibly an irrevocable trust (or more than one) into place. Ask your family for their thoughts – what matters most to them, what their own needs for the present and goals for the future are. Make sure each and every one of them speaks – and is heard.

This preliminary discussion can provide valuable guidance toward your more focused and detailed estate planning – if you have a large family only and one vacation home, you may want to create an LLC to hold the vacation home (and potentially other real estate), ensure the bills are paid and the property maintained, and that parameters for use are set – e.g., rotate use of the property for the most popular dates, if the vacation home can't comfortably accommodate your five children and nine grandchildren at the same time.

The second family meeting comes after you've taken your family's concerns and suggestions into account, reached your own conclusions as to what will be best for your family and legacy, and, together with your virtual CFO or other trusted financial advisor and your estate attorney, created your estate plan in detail.

In this second meeting, you will spell out, in detail, the plans you've made to ensure your legacy and your family's future.

You may get some pushback, but if you've listened to your family's input in the first meeting and made sure they feel they've been heard and considered, this should be minimal compared with what it might have been if you hadn't held that first meeting and invited everyone's participation in the process.



FINAL THOUGHTS

Succession planning, whether for your business or your estate, can be a daunting process – but Rigby Financial Group is here to help you manage it as smoothly and easily as possible. You do know both your business and your family – you know how much of both processes concern the well-being of people you respect and/or love. The rest, really, is mostly taking expert counsel – your virtual CFO or other trusted business and financial advisors, your business and estate attorneys, are experts in their field – and that field boils down to helping you, their client, navigate complex transactions and transitions.

It's never too early to start estate planning, but it's never too late, either, until and unless you die or become disabled before you've made your plans in the first place.

So, our final advice is:

Start planning! We invite you to begin with us – RFG has a team of experts at your service. We can recommend first-rate business and estate attorneys to you, among other experts, if you don't already have relationships in place.



DON'T DO IT ALONE!

When it comes to estate planning, one of the biggest assets you can leverage is a Virtual CFO or trusted business advisor.

You'll need other experts - certainly your estate attorney, and possibly other counsel.

But your virtual CFO or trusted business advisor is the best place to start! Don't leave your hard earned assets at risk if the unexpected should occur - call Rigby Financial Group and start planning for your family's security today!

