



Execute a Basic Estate Plan

Business Owner Action Item: Engage Hibiscus Legal to draft and execute a basic estate plan.

Why is This Important? The basic estate plan is the first step to preparing the business owner's comprehensive wealth succession plan.

In My Experience: Completing a basic estate planning provides emotional relief to the business owner and his family.

What is a basic estate plan?

1. Revocable Trust
2. Pour-Over Will
3. Financial Power of Attorney

What is a revocable trust?

A revocable trust is a trust that can be cancelled or changed at any time. The grantor (i.e., creator) of a revocable trust has full control of the trust's property. A revocable trust has the “**who gets what**” provisions. Upon the grantor's death, the successor trustee distributes the property in accordance with the revocable trust's “**who gets what**” provisions.

What are the general mechanics of a revocable trust?

I generally recommend the following “**who gets what**” provisions for a business owner who is married and has children.

1. Upon the business owner's death, the revocable trust authorizes the successor trustee to make distributions to the surviving spouse and the surviving children. The goal is to ensure that the surviving spouse has adequate support for her living needs, but also give the successor trustee the flexibility to support the surviving children.
2. Upon the surviving spouse's death, the revocable trust authorizes the successor trustee too make distribution to the surviving children. The goal is for the successor trustee to make distributions to the surviving children for their best interests, while promoting responsible financial habits and stewardship.

What does a revocable trust accomplish?

1. Probate can be avoided. Upon the grantor's death, property held in the revocable trust bypass probate, meaning the property can pass to heirs without involving the courts, which can be time-consuming and expensive.
2. Court-Supervised Conservatorship. If the grantor becomes incapacitated, then property held in a revocable trust bypass a court-supervised conservatorship, meaning the property is managed by the successor trustee without involving the courts, which can be time-consuming and expensive.
3. Privacy. A probated will is a matter of public record, while a revocable trust is private.

What is probate?

Probate is a court-supervised process by which a deceased person's creditors are paid and the decedent's property is distributed to the persons who are entitled to it.



How does a revocable trust avoid probate?

Property that is titled in the decedent's name at the time of death must pass through probate (unless it was held in joint tenancy with right of survivorship or subject to a beneficiary designation).

Property that is held in a revocable trust is not titled in the name of the decedent. It is titled in the name of the trust. It is therefore not subject to probate. The decedent's property must be held in the revocable trust (i.e., titled in the name of the revocable trust) to avoid probate.

Property that is not held in the revocable trust will have to pass through probate, unless it is held in joint tenancy with right of survivorship or subject to a beneficiary designation.

What is a pour-over will?

A pour-over will is a will that transfers the decedent's property to the revocable trust. Upon death, property held in the revocable trust bypass probate. Ideally, the decedent titled all property in joint tenancy with right of survivorship, property subject to a beneficiary designation or in the name of the revocable trust. Often time, the decedent still had some property titled in his personal name, which is subject to probate. At the end of the probate process, the personal representative of the decedent's estate will distribute the probated property to the revocable trust pursuant to the terms of the pour-over will.

What is a financial power of attorney?

If a person becomes incapacitated, then property that is titled in the person's name will need to be managed by someone. A financial power of attorney designates a person with the authority to manage the incapacitated person's property. Without a financial power of attorney, the property would be subject to a court-supervised conservatorship, which is an expensive and burdensome process.