

BUSINESS OWNERS HAVE FAMILIES TOO

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This article concerns family matters, and, more particularly, matters dealing with aging parents and other loved ones.

Many middle-aged business owners (and non-business owners alike) find themselves trying to deal with the problems of these loved ones as though they are business problems: analyze, then define the problem and efficiently implement the solution. Unfortunately, people who once changed our diapers, don't always (or often) respond as scripted.

This article provides a cursory overview of some of the tools (solutions) capable of being employed by busy executives who are also caring children or relatives of people who are no longer in the fast lane of life.

Conservatorship of the Person

If a loved one can no longer take care of themselves, a relative might petition the probate court in his/her county of residence for a Conservatorship of the Person. The process is commenced by the filing of a court form legal petition, paying a filing fee of less than two hundred dollars (\$200) and committing to pay the fee for a probate investigator.

The form legal petition will require the person filing (known as "the petitioner") to list and notify everyone of blood or family to a degree specified in the statutes. The family is notified of an upcoming hearing, initiated by the petitioner, that could result in someone obtaining the power to control the living environment of the loved one. Everyone who has anything to say may attend the hearing - probably with a lawyer.

The court investigator independently visits the loved-one to determine if, in fact, there is a need or a desire for the conservatorship. The investigator submits a written report to the judge.

At the hearing, where the loved-one is wheeled-in or independently walks in, a "conversation" is conducted by the judge and the loved-one - in open court. Once the judge is satisfied that a conservatorship would be in the best interests of the loved-one and that the proposed person is appropriate to appoint as that conservator, the order will be issued. The conservator may then wave (flap) the order at any disbelieving agencies or persons and know that the court system will be available to enforce the rights granted in the order.

Conservatorship of the Estate

Protecting the financial estate of an elderly loved-one is just as important in California as protecting their "person." After all, in an expensive economy live California, an elderly person who is allowed to lose his or her nest egg will have to move to another state. The legal procedure for obtaining control over some other adult's financial life is called "Conservatorship of the Estate."

The process for a Conservatorship of the Estate is exactly the same as for Conservatorship of the Person [described above]. The person who is appointed by the court will be charged with acting on behalf of the loved-one as the loved-one would act on his or her own behalf. The assets remain those of the loved-one; the conservator just has control over them. Again, a court order will result, giving the conservator paper to wave (flap) at a disbelieving souls.

Wills and Trusts

While the loved one can demonstrate clarity of thinking, it is important that the issue of wills and trusts be addressed and, more importantly, acted-upon.

Wills - A will, which takes effect only at the time of death, disposes of assets to persons (or entities such as a trust) favored by the decedent. A trust can be what is called a living trust or it might be one that arises from provisions in the decedent's will (called a "testamentary trust").

Living Trust - A living trust allows the trust creator (the "trustor") to appoint himself or herself as the trustee of a legal entity (the trust), which is treated as something totally separate from the trustor - much like a corporation is legally separate from its sole shareholder.

A trust document is written to state everything desired to be done by the trustor; it is signed in front of a notary public; the assets of the trustor are transferred to the trust (actually to the trustee, in trust for the beneficiaries). Those transfers require deeds to be drawn, owner's certificates to be taken to DMV and other places so that prior to the death of the trustor, he or she will have no assets; they will all be in the trust.

In the event a trustor hits the Lotto after creation of the trust, a will should be simultaneously written and signed which "pours over" into the trust anything after-acquired or not mentioned in the trust.

When the trustor dies, s/he will own nothing; everything will be in the trust. There will be no estate to probate. The trust provisions, which state who gets what when, will be immediately administered by the first alternate trustee. Life will go on. The beneficiaries (persons planned by the trustor to receive pieces of the estate) may hire lawyers to enforce the trust as written - if the first alternate trustee "forgets" his or her duties.

Inheritance Taxes - California does not have probate taxes; only the federal government collects a tax on the transfer of an estate at death. However, the feds have legislated a lifetime credit, which allows a person to transfer up to \$650,000 of cash or cash value without tax. Tax is assessed only on the transfer of assets in excess of that amount. A simple living trust will not defeat inheritance taxes. [There are simple trusts and complex trusts. See "Estate Planning (below).]

Testamentary Trust - A will that mandates the creation of a trust immediately upon the death of the decedent, is calling for a testamentary trust. Such a trust does not, will not exist prior to the death of the decedent. [It would, therefore, be important that the decedent not be listed as the trustee.]

The assets listed in this type of trust will be the subject of probate procedures in the county Superior Court - because they were part of the decedent's estate at the time of death (as opposed to the creation of a living trust where the assets were separated-out, away from the decedent prior to death).

The normal rationale for the creation of a testamentary trust is a desire to time the receipt of assets to the beneficiaries, e.g., monthly payments (instead of one lump sum payment) to an alcoholic adult child of the decedent.

Estate Planning

Estate planning is a process of determining the best combination of legal and investment forms to suit a person's circumstances. The person doing that work interviews the asset-owning person (or that person's conservator of the estate) and helps that person make decisions that will have the maximum benefit - all in accordance with the desires of the asset-owning person.