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Estate Planning for Intellectual Property

If you are an inventor, author, artist, or owner of a closely held business, you may have already taken steps to help protect your **intellectual property rights**. Certain types of intellectual property, such as business ideas, visual art, published or unpublished literary and musical works, inventions, computer programs, and designs of clothing and architecture, may be protected by law through copyrights, patents, and trademarks. When planning your estate, carefully consider these valuable assets to help ensure that they are transferred to your heirs according to your wishes upon your death.

Unique Concerns

Intellectual property is a unique asset, as it is an expression of an individual's knowledge and ideas. While not simply a thought itself, intellectual property is an intangible asset that is the direct result of work or trade. Just as no two individuals think alike, each estate that owns intellectual property must be handled differently. This area of estate planning is continually evolving, particularly as intellectual capital continues to gain significance throughout commerce in general.

Initially, it is important to determine if the intellectual property can be passed down to heirs. Certain types of intellectual property may have inherent **renewal or termination rights** through copyrights, patents, and trademarks. This can create questions as to *when* intellectual property rights become transferrable. To address these concerns, some intellectual property owners choose a second executor to handle intellectual property issues in their estates. For example, an author may appoint a family member to oversee the general administration of his or her estate, as well as a second person or entity with experience in intellectual property to handle posthumous publications.

The valuation of intellectual property also poses a challenge to estate planning. The Internal Revenue Service (IRS) offers guidelines for some, but not all, types of intellectual property. For instance, the valuation of literary work is based on the copyright's future earnings potential reduced to its present value. Theoretically, this valuation methodology may also apply to other types of intellectual property. However, the question may remain as to how far into the future the potential for earnings exists. It may be possible

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Older Americans: Targets of Financial Fraud

America's older generations grew up in a different world where it was customary to be courteous and trusting. Unfortunately, these exemplary standards of conduct could get some individuals into trouble. Con artists bank on the willingness of older Americans to trust in a variety of too-good-to-be-true investment "deals." Therefore, many people already experiencing financial difficulties have become more vulnerable to financial fraud in recent years.

Scammers have an unlimited number of opportunities to obtain an individual's personal information, ranging from the phone to the Internet. Common scams include e-mailed chain letters promising a financial windfall once the victim buys in; or e-mails from foreign lawyers claiming to need assistance transferring their wealth to an American bank account. In turn, the victim is promised up to 30% of the transferred millions if an upfront fee is paid.

Other phony schemes involve chances to "win" the lottery or claim a sweepstakes prize, and fake charities where kind-hearted donors are swindled into contributing sums to a

cause that benefits only the con artist. Topping off all of these scams are fraudulent investment opportunities whereby the victim is promised fantastic returns on capital from "lucrative" oil and gas leases, penny stocks, rare coins or metals. In the end, these scams can cause financial loss and heartache to many unsuspecting victims. This type of crime often goes unreported due to the shame fraud victims can experience, which is exactly what scammers count on.

Several years ago, the FINRA Investor Education Foundation in partnership with WISE Senior Services and the AARP researched why older individuals are often victimized by financial fraud. The report revealed psychological tactics typically used by cons. For example, victims may be pressured to believe that their only option is the scam, or the scammer may request help, tapping into the victim's sympathy. Another ploy is to claim famous investors are also buying into the property or product in such high demand, and how lucky the victim is to have this opportunity. Con artists may also prey on victims' fears to coerce them into making decisions; offer no-risk,

guaranteed results; or procure more payments by telling victims they must continue to invest to keep what they have already paid in.

The FINRA study indicated that financial education alone may not be enough to put an end to fraud because older adults tend to listen more to sales pitches than younger generations. One possible explanation for this could be that people with financial difficulties who have experienced negative life events, such as job loss, divorce, or the death of a spouse are more inclined to be open to a solution to their problems.

Fighting Back

The best way to fight fraud is to walk away from "must-act-now" deals and do your own research. Be skeptical, question why the offer is being made to you at this time, and contact the Better Business Bureau to learn more. Make sure to get second opinions from friends, trusted advisors, and family before taking action. Remember, if it sounds too good to be true, it probably is. For more information, visit www.consumerfraudreporting.org. ■

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to hire a professional appraiser to help determine the current value of intellectual property and how future trends may affect this value. But, it is also important to choose someone with expertise in the area of intellectual property.

Estate Taxation

Estate taxation affects individuals with substantial assets, regardless of

the type of property that is included in his or her estate. However, intellectual property sometimes creates additional concerns. Just as an executor might be forced to sell a family vacation home solely to pay for estate taxes, a best-selling author may fear that, after his or her death, the future publication rights to an unpublished work will need to be sold for the same reason. If a large portion of an

individual's assets is "intellectual" in nature, this can be a major concern.

Proper estate planning is pivotal in helping to make sure the decedent's wishes are able to be carried out. A **life insurance** policy purchased and owned by an **irrevocable life insurance trust (ILIT)**, if correctly structured and administered, can provide cash at death to help

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Agree Now, Avoid Headaches Later

It's easy to get caught up in the day-to-day tasks of running your business and to put off thinking about the future. But every business needs a plan.

A buy-sell agreement is a great tool to help you and your fellow business owners deal with some difficult issues that may come up in the course of running a business. This type of agreement provides for the sale of an owner's interest in case of death, disability, retirement, an offer to purchase the interest from an outside party, or the divorce of a partner.

Having a buy-sell agreement assures the departing owner (or the family) that there is a guaranteed buyer who will buy the business at a fair price. The buying shareholders benefit because the agreement enables them to continue the business without having to negotiate with outside parties. Buy-sell agreements can be drafted to accomplish the following:

- Set a fair price for valuing the stock that is to be transferred
- Determine the procedure to be followed when a triggering event occurs, such as retirement

- Give the right of first refusal to the other shareholders, to maintain continuity of the business
- Provide funds or an income stream to the business owner's survivors

A buy-sell agreement, however, does not guarantee that the other shareholders or key employees will have the means to purchase the stock. So, you may want to fund your agreement with life and disability insurance. In this case, either the company purchases life insurance on all of the shareholders or the shareholders purchase life insurance on each other. The proceeds, which are generally tax free, are used to purchase the decedent's stock. Unfortunately, the business cannot deduct the life insurance premiums.

If you operate as an S corporation, it's even more critical to have a buy-sell agreement, which can prevent an owner from selling an interest to a nonqualifying shareholder that would nullify the S corporation election. It is important to make sure that your buy-sell agreement treats all owners equally and that its provisions are followed. Preferential rights, both within the agreement or



as a deviation from it, could constitute a second class of stock and, thus, could nullify the S election: an S corporation can have only one class of stock.

Buy-sell agreements can help ensure a smooth transition when a partner departs from a closely held business. As you think about your plan, structure an agreement that meets the needs of the company and the shareholders and their heirs. ■

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satisfy estate tax obligations. This use of life insurance can provide flexibility in an estate with only a small amount of liquid assets.

Also, if the intellectual property is of significant size, gifting some or all of the property to a recognized charitable organization at death can help to lower estate taxes. The estate of the decedent would receive a charitable

contribution deduction against estate taxes based on the fair market value of the gift at death.

One Step at a Time

Estate planning for intangible assets, such as intellectual property, involves an array of complicated considerations. A basic understanding

of the issues involved merely underscores the need for appropriate planning to help ensure the ultimate distribution of your assets according to your wishes. If you own intellectual property, be sure to consult with your estate planning team, including financial, legal, and tax professionals. ■

Life Insurance and Divorce: Protecting Your Family's Future

Sometimes in life, things don't work out as planned. One of the most trying examples is when a couple decides they can't make their marriage work and, subsequently, files for divorce. Divorce can take a significant financial and emotional toll on a couple, their children, and other family members. In the midst of immediate financial and legal concerns, couples also need to consider ways to help protect their individual financial futures and that of their children's in the event of death. Life insurance may offer a solution.

Let's take a look at several different scenarios. After divorce, if the non-custodial parent who is paying alimony and/or child support were to die, then the custodial parent may be unable to maintain the children's lifestyle or save for a future college education. On the other hand, if the custodial parent were to die, the non-custodial parent may be unable to afford childcare expenses. Consequently, divorcing couples may want to consider making life insurance policies part of the divorce decree.

The custodial parent may want to purchase a life insurance policy on the non-custodial parent, but if not, transferring ownership and beneficiary arrangements on an existing policy may be another option.

The custodial parent may request alimony or child support increases to cover the cost of policy premiums. If the non-custodial parent remains the policy owner, the divorce decree can include arrangements to ensure that the custodial parent is named as the irrevocable beneficiary, and



that he or she receives ongoing proof that the payments are made and the policy remains in force.

The non-custodial parent may wish to keep the policies he or she already has to protect other financial interests. To ensure protection for children from a previous marriage, the non-custodial parent may consider purchasing a new policy on his or her life, naming the former spouse as the owner and beneficiary. If this is done before or during the divorce proceedings, gift tax will not be owed. If the custodial parent is the policy owner, premiums may be tax deductible as alimony.

For existing policies, it is important to remember that the insurance company must be notified of any beneficiary changes. A will cannot be used for this purpose. In addition, should the insured remarry and the policy names the "husband" or "wife" of the insured as the beneficiary, the new spouse may receive the proceeds. If the insured does not remarry and the same policy language is in force, then the proceeds may be paid to the secondary beneficiary. If the insured's estate is named as the new beneficiary, insurance proceeds may be delayed by the probate process. If minor children are named as beneficiaries, additional problems may arise, as insurance companies generally do not pay minors directly. For this reason, you may want to consider creating a trust for minor children and naming the trust as the beneficiary of the policy proceeds.

Divorce is rarely easy, but with a well-planned strategy, the short- and long-term financial needs of your loved ones can be met. Since laws vary from state to state, be sure to consult with your team of qualified tax and legal professionals about your unique circumstances. ■

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