

The Key to Succession Planning: A Revocable Trust

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How can you ensure your legacy endures and your loved ones are spared unnecessary heartache during a challenging time? Succession planning is one of the most crucial aspects for securing financial stability and ensuring a smooth transition of wealth across generations upon the death of a business owner. Proactive planning today can save loved ones future confusion, stress, and financial strain. Among the many tools available for succession planning, a revocable trust stands out as one of the most versatile and effective methods for securing one's legacy and preserving the value of a business.

What is a Revocable Trust:

A revocable trust, also known as an "inter vivos" or "living" trust, is a legal document that allows an individual, known as the **grantor**, to transfer ownership of their assets, including a business, into a trust for their own benefit during their lifetime. Simply put, a trust can be the proverbial bucket in which you "hold" your assets. The grantor can revise the document at any time, adding or removing assets or even revoking it entirely if circumstances change.

Upon the grantor's death, the trust becomes irrevocable, and the designated **successor trustee**—the person named by the grantor to manage the trust after their death—distributes the trust's assets according to the terms outlined in the trust document. Unlike a Last Will and Testament, which becomes effective only after death, a revocable trust functions during the grantor's lifetime. It provides control over assets while simplifying asset distribution after death by avoiding the probate process required with a Last Will and Testament.

Key Benefits of Using a Revocable Trust in Succession Planning:

1. **Avoiding Probate:** One of the primary advantages of a revocable trust for a business owner is that assets held within the trust bypass the probate process. Probate is a public, court-supervised process that can be lengthy, costly, and stressful for heirs. During probate, the deceased's assets, including business assets, can be frozen during the pendency of a probate proceeding. When a business is one that needs daily attention, services customers, runs a payroll, and has employees, even a short delay could mean financial ruin. With a revocable trust, the appropriate party can step in immediately to manage the business, allowing for uninterrupted operations and quick, private inheritance for beneficiaries.
2. **Maintaining Privacy:** Probate is a public process, meaning the estate details—including the business assets owned by the decedent and their beneficiaries—become a matter of public record (as illustrated by the widely reported Last Will and Testament of actor James Gandolfini, published on the first page of the New York Post). A revocable trust, however, remains private, ensuring a discreet transfer of assets and protecting family members from unwanted attention, potential disputes, and estate contests.
3. **Flexibility and Control:** The grantor of a revocable trust retains control over the assets placed in the trust, allowing for the addition or removal of assets as needed. Business interests, investments, and real property owned in different states

can all be titled in the same trust, creating an organized structure for asset management. This flexibility allows for updates as family dynamics or financial situations evolve (consider the 5D's), ensuring the trust remains adaptable and effective throughout changing circumstances.

4. **Protection for Beneficiaries:** If you have young or financially inexperienced beneficiaries, a revocable trust can also protect their inheritance by establishing “sub-trusts” specifically for them. Simply put, the grantor’s trust can contain additional trusts to benefit the beneficiaries. These sub-trusts provide guidelines and stipulations for how and when distributions to the beneficiaries are made, providing structure and oversight. When business assets are left to inexperienced beneficiaries, these guidelines and stipulations are particularly helpful, and a trustee can be appointed who has familiarity and understanding of the business to ensure that those interests are protected. Sub-trusts are particularly useful for parents or grandparents looking to ensure that minors or financially vulnerable beneficiaries are cared for responsibly, preventing unrestricted access to valuable business assets.
5. **Incapacity Planning:** In the event that the grantor becomes incapacitated, even temporarily, a revocable trust allows for seamless management of their affairs by a designated successor trustee. This trustee, selected by the grantor, can be someone well-versed in both the business operations and the grantor's family dynamics. Appointing a competent successor trustee in advance can effectively manage potential financial and administrative crises, helping to avoid the need for a court-appointed guardianship, which can be a lengthy and an emotionally taxing process.
6. **Avoidance of Disputes:** A revocable trust clearly defines named beneficiaries, ensuring they receive their inheritance without being involved in the probate court process. In New York and many other states, next of kin, who may not even be beneficiaries named in the Last Will and Testament, are notified of their family member's death and provided the opportunity to appear in court *and dispute* the terms of the Last Will and Testament. However, with a revocable trust, there is no probate court proceeding, eliminating the notification requirement for disinherited individuals. This absence of a court process makes it significantly more challenging to dispute the terms of a revocable trust.

Securing Your Legacy

Succession planning with a revocable trust provides control, flexibility, and protection for both the business owner and their beneficiaries. By securing financial stability and continuity in business operations, even after the death of the owner, a revocable trust can be a valuable component of a comprehensive estate plan. Whether you are in the process of building your business or preparing for sale or succession, or planning your legacy, consider the use of a revocable trust to protect your family's future with confidence.