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Trustee Selection

Choose wisely if your family-owned business will be held in a trust.

Let's assume that you and your spouse are the sole owners of a very successful business. You have established an estate plan with trusts in place to utilize the estate tax exemptions of both spouses for Washington state and possibly at the federal level. You plan that after the death of the survivor, the business will pass in trust to your children. You have always played a strategic role in operating your business. Your spouse, however, has never had any active involvement other than as a community property owner, which typically meant signing papers that you brought home.

Consider what would happen at your passing. As is typical for married couples, you may have named each other as trustee of your trusts. If you die before your spouse, your share of the business may now be held in an irrevocable trust. That means that your spouse, who has had no experience with running the business, is now a fiduciary to your children, responsible for your business's proper management and continuing success, so that your children eventually will inherit a prosperous business.

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Of course, it is always important to consider trustee selection carefully, even if you don't own and run a business. However, the scenario just described illustrates the importance of trustee selection when a family business is involved. Business owners do not always fully comprehend the consequences of transferring their business to a trust. As a business owner, you may have a thoughtful succession plan in place with respect to the key employees who will operate your business when you are no longer able to do so. However, when assets are transferred to a trust, the trustee holds legal title to the trust property. A trustee's business decisions may affect your well-crafted plan, even unintentionally.

Here are some trustee selection issues to consider if your estate plan will include trust ownership of your family business:

1. Which trust will hold the family business?
2. Do family members or nonfamily members other than you own any part of the business? How will they get along with your trustee as co-owner?
3. Are there key employees on whom the business depends? Will they continue to work for your trustee after you are gone?
4. Does the nature of the business warrant a specialized trustee or at least require guidance from you about what sort of professional business management your trustee should engage?
5. Do you intend for the trust to exist for a few years or a few generations? Will there be a need for trustees to manage the business for a significant period of time?
6. Should beneficiaries have a trustee role?
7. Will your trustee selection be affected by income or estate tax considerations requiring an "independent" trustee?

Unless tax considerations limit your choice, you will have a wide array of potential trustees to choose from, ranging from individuals to a corporate trustee. Your trustee could be a family member, trusted employee, unrelated person or an individual professional fiduciary. Professional trust companies offer a range of services, along with expertise often not found in even the most talented single individual. Given the complexities and headaches of running a business, you may find that not all potential trustees are willing to assume the responsibility you are offering.

Taking the time to consider all of these issues in advance of funding your trust with ownership of a family business will help you make a wise choice of trustee and preserve the value of the legacy you want to leave to your beneficiaries.

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