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# Estate Planning & Corporate Succession Guide for Transportation Company Owners

You may recall that saying that “the best laid plans of mice and men often go awry.” That statement suggests that even the most careful planning does not necessarily ensure success. However, that is not a statement *against* planning. In the post-pandemic world, transportation companies experienced – as harshly as any industry – how business is impacted by external factors outside of their control at the macro, worldwide level. At a micro level, business owners who have worked for years – even decades – to build a company, a brand and a loyal customer base, would be remiss not to consider and prepare succession plans in the event of an illness or death. This planning priority is particularly needed in the luxury limousine transportation industry, since many of these businesses are inextricably linked to the founder or long-time CEO. In this article, I will address some of the considerations to assist transportation company owners and executives to ensure that their lifetime’s work is passed on pursuant to their desires, and that their expressed wishes for the company are implemented.

## ESTATE PLANNING

Estate planning is the process of ensuring that your assets are distributed according to your wishes after your passing. It is an important part of any business owner’s financial planning, and it can help to protect your assets from creditors, taxes, and future business disputes. There are many different aspects to estate planning, and the specific steps you need to take will depend on your individual circumstances. However, there are some basic elements that are common to all estate plans that I will discuss below.

### *Create a Last Will and Testament*

A Last Will and Testament is a legal document that specifies how – and to whom – your assets will be distributed after you die. It is the most important part of any estate plan, and it is essential to have one in place. The beneficiaries will receive the property of your estate based on the terms contained in your Last Will and Testament, which can contain specific provisions subject to applicable laws.

The named executor of your estate will be responsible for carrying out your wishes. An executor can be a trusted family member, advisor, or attorney, and – depending on the circumstances and your particular jurisdiction – the executor may be entitled to statutory fees unless stated otherwise.

A well-drafted Last Will and Testament will include provisions that distribute all of the property of your estate through a combination of specific bequests and remainder provisions to specified beneficiaries within the parameters of the law. Therefore, for your Last Will and

Testament to be fully enforceable, it should be drafted by a qualified attorney familiar with the applicable law in your jurisdiction.

### *Consider Creating a Trust*

A trust is a legal entity that can be used to hold your assets and distribute them according to your wishes. Trusts can be used to protect your assets from creditors, to reduce estate taxes, and to provide for your loved ones in a specific way. There are many different types of trusts, so you will need to work with an attorney to choose the right one for your needs. Common types of trusts include:

- ***Revocable trusts:*** These trusts are also known as living trusts. They can be changed or revoked by the grantor (the person who creates the trust) at any time during the grantor's lifetime. Revocable trusts are often used to avoid probate, which is the court-supervised process of distributing a person's assets after their passing. Revocable trusts are the most common type of trust in New York. They are a popular choice because they offer flexibility and can be changed or revoked at any time during the grantor's lifetime. This can be helpful if the grantor's circumstances change, or if the grantor decides to terminate the trust.
- ***Irrevocable trusts:*** These trusts cannot be changed or revoked by the grantor once they are created. Irrevocable trusts are often used to protect assets from creditors or to provide for a beneficiary with special needs. Irrevocable trusts are less common than revocable trusts, but they offer some important benefits. For example, assets in an irrevocable trust are protected from creditors and cannot be seized in a bankruptcy. Irrevocable trusts can also be used to reduce estate taxes. The caveat is that the trust being irrevocable, the consequences of the transfers into the trust cannot be undone.
- ***Testamentary trusts:*** These trusts are created in your Last Will and Testament and only come into effect after the grantor passes. Testamentary trusts are often used to provide for minor children, or to distribute assets in a specific way. Testamentary trusts are created in a Last Will and Testament and only come into effect after the grantor passes. This type of trust can be a good way to provide for minor children or to distribute assets in a specific way according to your business succession plan as discussed below.
- ***Charitable trusts:*** These trusts are created to benefit a charitable organization. Charitable trusts can be revocable or irrevocable.

### *Appoint a Power of Attorney*

A power of attorney is a legal document that gives someone else the authority to make decisions on your behalf, which can be especially important if the transportation company owner becomes incapacitated. This could include making financial decisions, medical decisions, or both.

It is important to appoint an attorney-in-fact (who is appointed via the power of attorney) whom you trust, and who will act in your best interests. For the power of attorney, you can provide specific limitations on the scope of authority of the agent under your power of attorney, including specific limitations or directives in accordance with your estate and business succession plan.

There are two main types of power of attorney: durable and limited. A durable power of attorney remains in effect, even if you become incapacitated or unable to make decisions for yourself. This means that your agent can continue to act on your behalf even if you are no longer able to do so. A limited power of attorney only gives your agent the authority to act on your behalf for specific purposes. For example, you could give your agent the power to conduct your business affairs, but not the power to make medical decisions for you. This is typically reserved for a Living Will, which is discussed below. The main difference between a durable power of attorney and a limited power of attorney is that a durable power of attorney remains in effect even if you become incapacitated, while a limited power of attorney only remains in effect while you are still able to make your own decisions.

Which type of power of attorney is right for you will depend on your individual circumstances. If you want to ensure that someone can continue to act on your behalf if you become incapacitated, then a durable power of attorney is the better option. We have seen many situations over the years where regulatory agencies across the United States have refused to transfer ownership of limousine or for hire permits, taxi medallions, and other types of transportation business licenses and vehicle permits. One way to potentially avoid this situation, to ensure your business can continue to run should you become incapacitated or worse, is to have a power of attorney in place and/or to have those in line of succession listed with the regulatory agency on the permit or license.

Using NYC as an example, if you only need someone to act on your behalf for specific purposes, then a limited power of attorney may be sufficient, such as a power of attorney tailored to a particular regulatory agency like the New York City Taxi and Limousine Commission (the "TLC"). The TLC requires a power of attorney for anyone but the named owner of a for-hire vehicle ("FHV") license or taxicab medallion to conduct business at the TLC. If you are without a properly executed power of attorney in a form acceptable to the TLC, then you are out of luck conducting any business with the TLC until the estate is processed by the Surrogate's Court in the county of the decedent's residence. Estate proceedings in the New York Surrogate's Court can take from six months to more than one year if an ancillary estate is required for FHV license owners and medallion owners living outside of New York State.

During the pendency of the estate, doing business involving the base license, FHV license or medallion may be impacted – and a medallion may be involuntarily placed into storage and irretrievable from storage pending the issuance of letters testamentary or administration by the Surrogate's Court. This can be exceptionally problematic in the case of FHV licenses because non-use of an active FHV for sixty (60) days or more may result in revocation of the FHV license. Considering the ability to store FHV licenses for extended periods of time ended on August 31,

2023 by notice from the TLC, without a proper power of attorney, an entire business can be interrupted and remain in limbo until the estate is processed by the courts.

### ***Create a Living Will***

In addition to a durable power of attorney, a living will is a legal document that specifies your wishes for end-of-life care and other healthcare-related decisions in the event of your incapacity. This could include whether you want to be placed on life support, whether you want to be allowed to pass naturally, and who you want to make decisions about your care if you are unable to make them yourself.

In the event of incapacitation, without a living will or an equivalent durable power of attorney containing specific healthcare-related provisions, your loved ones may not be able to make the decisions necessary to carry out your medical and healthcare-related wishes. A living will is not a substitute for a durable power of attorney. A living will only addresses your wishes for end-of-life care, while a durable power of attorney authorizes someone to make decisions on your behalf for a wider range of matters, such as the financial and legal matters discussed above.

### ***Plan for Long-Term Care***

Long-term care can be expensive, so it is important to plan for it. You can do this by purchasing long-term care insurance (LTCI), by setting aside money in a special account, or by relying on Medicaid or Medicare. LTCI is a type of insurance that can help pay for the cost of long-term care, such as a nursing home or assisted living facility. LTCI can be a valuable financial tool for people who are concerned about the cost of long-term care, but, as a transportation business owner, it is important to understand the pros and cons before purchasing a policy.

#### ***Pros of LTCI***

- LTCI can help protect your assets from being depleted by the cost of long-term care.
- LTCI can provide peace of mind knowing that you have a plan in place to pay for long-term care.
- LTCI can help you maintain your independence and dignity by allowing you to stay in your own home or in a community setting.

#### ***Cons of LTCI***

- LTCI can be expensive, especially if you purchase a policy later in life.
- LTCI policies can have high deductibles and copays.
- LTCI policies may not cover all types of long-term care, such as home health care or adult day care.

LTCI is a good option for business owners/managers who are concerned about the cost of long-term care and who have the financial resources to purchase a policy. LTCI is also a good

option for people who want to maintain their independence and dignity by staying in their own home or in a community setting. There are a number of factors to consider when choosing an LTCI policy, including the cost of the policy, the type of coverage, and the waiting period. It is important to shop around and compare policies from different companies before making a decision.

### ***Update Your Estate Plan Regularly***

Your estate plan should be reviewed and updated regularly, especially if your circumstances change. This could include marriage, divorce, changes in family composition, business relations and transactions, or changes with your business or financial situation.

Estate planning can be complex, but it is an important part of financial planning. By taking the time to plan ahead, you can ensure that your assets are distributed according to your wishes and that your loved ones are taken care of after you are gone.

Here are some additional tips for estate planning:

- ***Get professional help.*** From our experience, estate planning and corporate attorneys can help you create a comprehensive estate plan that meets your individual needs, and protect your business assets.
- ***Be specific.*** When you are creating your estate plan, be as specific as possible about your wishes. This will help to avoid any future confusion or disagreements.
- ***Communicate your wishes.*** Once you have created your estate plan, it is important to communicate your wishes to your loved ones. This will help to ensure that they understand your wishes and that they are able to carry them out in the future.

High net worth individuals (HNWIs) in the transportation industry have spent years – often decades – building their businesses and the brands. That is the good news. However, the HNWIs also have a number of additional estate planning considerations that they need to take into account. These include:

- ***Business Succession.*** As discussed in more detail below, if you own all or a significant portion of the transportation business, you will need to plan for the succession of your business after you die. This may involve selling the business, transferring ownership to family members, or hiring a manager, which is discussed in more detail below.
- ***Estate Taxes.*** HNWIs are more likely to be subject to estate taxes. You will need to take steps to minimize your estate tax liability, such as using trusts and other estate and business planning techniques.

With respect to estate tax issues, HNWIs will also require detailed estate planning to maximize the most beneficial tax treatment. There are a number of ways to use estate planning to avoid taxes. Here are a few of the most common:

- **Gifts:** You can give away up to \$17,000 per person per year without incurring gift taxes. Married couples can gift up to \$34,000 per person per year. You can also give away more than the annual gift tax exclusion, but you will have to use up part of your lifetime gift and estate tax exemption.
- **Trusts:** Trusts can be used to hold assets for beneficiaries and can be structured in a way to minimize estate taxes. There are many different types of trusts, so you will need to work with an estate planning attorney to choose the right one for your needs.
- **Charitable giving:** You can donate assets to charity and avoid paying estate taxes on those assets. There are two main types of charitable trusts: charitable lead trusts (CLTs) and charitable remainder trusts (CRTs). CLTs provide income to a charity for a specified period of time, and then the assets go to the beneficiaries. CRTs provide the beneficiaries with income for life, and then the assets go to the charity.
- **Life insurance:** Life insurance proceeds are not subject to estate taxes. You can name your beneficiaries as the owners of the policy, or you can use the policy to fund a trust.
- **Retirement accounts:** Retirement accounts, such as IRAs and 401(k)s, are not subject to estate taxes until the money is withdrawn. You can name your beneficiaries as the owners of the accounts, or you can use the accounts to fund a trust.

Here are some additional things to keep in mind when using estate planning to avoid taxes:

- The **estate tax exemption** amount changes every year. For 2023, the exemption amount is \$12.92 million for individuals, and \$25.84 million for married couples filing jointly.
- The **gift tax exemption** amount is also subject to change. For 2023, the exemption amount is \$17,000 per person per year.
- There are a number of other factors that can affect your estate tax liability, such as the size of your estate, the types of assets you own, and your residency status.

***For additional information or tax law related-advice, please contact our office at 212-237-1106 for a consultation,*** as there are many moving parts involved and licensed professionals are advisable rather than trying to understand the web of IRS regulations on your own. This is far too important of a topic to make assumptions which can lead to serious mistakes and excess tax exposure.

## **CORPORATE SUCCESSION PLANNING**

Corporate succession planning is an essential component of estate planning for individual owners of closely operated corporations and companies. Corporate succession planning is the process of ensuring that a transportation company can continue to operate smoothly and effectively after the death or retirement of the current owner/manager. Here are some key considerations for corporate succession planning for a transportation company:

- **Identify potential successors.** The first step in corporate succession planning is to identify potential successors. This could include family members, employees, or outside managers.

- ***Develop a succession plan.*** Once potential successors have been identified, a succession plan should be developed. The succession plan should outline how the company will be transferred to the successor(s) and how the company will be managed in the future.
- ***Train and prepare successors.*** The successor(s) should be trained and prepared to take over the company. This training should include both technical, management skills, and regulatory compliance.

The succession plan should be communicated to all relevant individuals so that they are aware of the company's plans for the future. Leaving the successor and the employees without a clear plan and detailed instructions can result in a systemic breakdown of operations and gaps in processes. This lack of planning could result in frustrating and costly gremlins like unpaid taxes, summonses, and fines plus the associated interest, penalties, and fees that are required to be paid in order to maintain good standing.

Here are some of the documents that are typically included in a corporate succession plan:

- ***Ownership documents:*** an outline of who owns the company and how the ownership is structured. This could include articles of incorporation, bylaws, and shareholder agreements.
- ***Management documents:*** documents reflecting who is responsible for managing the company and how decisions are made. This could include a management team charter, a succession plan for key management positions, and a conflict of interest policy.
- ***Financial documents:*** documents showing the company's financial situation and how it is managed. This could include budgets, financial statements, and investment policies.
- ***Operational documents:*** these documents outline the company's operations and how they are run. This could include policies and procedures, training manuals, and customer service guidelines.
- ***Communication plan:*** a key document outlining how the succession plan will be communicated to employees, customers, and other stakeholders.

The specific documents that are included in a corporate succession plan will vary depending on the size and complexity of the company. However, the documents listed above are a good starting point for any company that is developing a succession plan. Here are some additional tips for creating a corporate succession plan:

- ***Start early.*** The earlier you start planning for succession, the more time you will have to identify and develop potential successors and resolve any issues.
- ***Get input from key stakeholders.*** The succession plan should be a collaborative effort that includes input from key stakeholders, such as employees, customers, and investors.
- ***Be flexible.*** The succession plan should be flexible enough to adapt to changes in the company's business or ownership structure.



- ***Review and update the plan regularly.*** The succession plan should be reviewed and updated regularly to ensure that it is still relevant and effective.

Corporate succession planning is an important part of ensuring the long-term success of a transportation company. By taking the time to plan for the future, transportation companies can ensure that they will continue to operate smoothly and effectively even after the passing or retirement of the current owner.

## **SOME PARTING THOUGHTS**

Estate planning and corporate succession planning are important for individuals and businesses of all sizes. By taking the time to plan ahead, you can ensure that your assets are distributed according to your wishes, and that your business can continue to operate smoothly after you are gone. Being able to achieve estate planning and corporate succession planning in advance of an emergency will provide a cost-benefit result, and those early – and updated – consultations with estate planning and transportation attorneys can best ensure that your heirs and business partners have an unambiguous understanding should you become unable to lead that business.

It is very important to consult with your CPAs, lawyers, financial advisors as well as your family and executive team. Trust and sound decisions on who to put in charge or empower when you are not around needs to be coupled with sound professional advice so that you can rest assured that any contingency is covered. Start with a business valuation and inventory of assets, and then contact your lawyers, accountants and financial advisors, who should all work together as a coordinated team. It is worth the investment – after all – it is for many mobility company owners your life's work.

It is important to have not only an experienced full-service law firm that has tax lawyers and estate planning lawyers, but also transportation lawyers who understand how your company works, how the industry works, and who knows how to navigate the regulators and government agencies involved with your transportation business. If you would like to learn more and explore your options, contact me and my extended team at **212-237-1106** or **[mdaus@windelsmarx.com](mailto:mdaus@windelsmarx.com)**.