



Transcript for Podcast Episode: 016

Estate Planning for Business Owners

Hosted by: Michelle Ward and Shawn Cahill

Guest: Rebecca Hobbs

Michelle: We are a modern CPA. Our purpose is to provide valuable information to small business owners on our podcast Profit Points. We discuss business how tos, give tax tips and dig into real life experiences in the crazy world of running your own business. If you find this podcast helpful, then like subscribe and follow us on social media.

Michelle: Welcome everybody to Profit Points Podcast Episode 16, where we talk to Rebecca Hobbs, who is an estate attorney and deals in estates and elder law. And we talk to her about the foundations that are needed when you have a business and the items to consider in your estate when you're making those plans for you and for your heirs. So please join us on the Profit Points podcast. Welcome, Rebecca. Can you tell us a little bit about yourself?

Rebecca: Yeah, thank you. Thank you for having me. Yeah. So as Michelle said, I am an attorney. I practice estate planning for estate administration. I do a lot of elder law. I'm a certified elder law attorney, so I am a partner with a local law firm. O'donnell, Weiss, Mattei and we are out of Pennsylvania and the suburbs of Philadelphia, so Phoenixville and Pottstown. But yeah, that's what I do. This is right up my alley.

Michelle: Awesome. So we're talking to the right person then. That's great. Yeah. So first of all, just to kind of frame the questions really that we're hoping to get some answers on or at least have a discussion on, is many of the people that are in our community are small business owners, so they have one or two partners within their business, whether it be a partnership or an s-corp or something like that. So they're considered closely held, not a big corporation that has many different people and many different compensation packages and ownership and things like that. So the questions that a lot of people have because of having such a small business is what needs to happen in their estate, things that they need to consider in their estate when they're either drafting their wills or later down the line when they have a small business, what happens to it? Right. So what are some of the things that you see in your practice?

Rebecca: Yeah. So I think with any kind of estate plan or business succession plan, there are what we refer to as just basic building blocks for any plan. So there are basic documents, basic provisions that you really should have in any kind of estate plan and then some specific provisions where you are the owner of a business. So I'll kind of walk you through those different building blocks and things to consider. And then, of course, just to be mindful, you know, in the framework of this conversation we're

having today. So I do practice in Pennsylvania estate planning, although there are some basic concepts that apply to anyone and any state as well as some basic business succession planning blocks. It is important to make sure that you understand and speak with an attorney in your specific state, just make sure that everything is covered with each state. Those have some nuances. So when we're talking about basic estate planning and kind of where you start, there's really three primary documents and you mention the last will and testament. And then I have found this document most people are familiar with, right? Yeah, sure. And that's the document that says "When I die, what happens to anything that I own?" And that document is super important and it really should not only address, you know, who you want to receive your estate upon you pass away, but also appointing an executor to be able to handle your estate and wrap up your affairs in the event something would happen to you. And when you're a small business owner, that person is going to be really important because not only now are they in charge of handling any of your investment accounts or dealing with any of your real estate. But now they're also going to be in charge of wrapping up, potentially wrapping up your business, depending on what your succession plan is and dealing with that. So it is someone that you need, especially when you're a business owner, you need to think through who do you want your executor to be and who is going to be able to take on that role, have the time to take on that role, and then some. And what I have found, too, and John and Michelle, you probably see this as well, is that the executor that individuals appoint, it's good for you to have a conversation with this person ahead of time, because sometimes what happens is people do really good estate plans, really good business. A succession plan. And they nominate an executor. They nominate a power of attorney. And we'll talk about what that is. But they never have a conversation with these people about, hey, is this a job....

Michelle: Yes.

Rebecca: Is this something that you're willing to take on?

Michelle: And is this in your skill set, too, because there's some things that have to be done that may not flow with the way that person thinks or is organized enough or. Yeah, we see that all the time.

Rebecca: Yeah. Yeah. And that introduction to the other professionals in that individual's life. So, you know, a small business owner is going to be working closely with their accountant. Potentially working closely with their financial advisor and their estate planning attorney, so the introduction to that world of who are the advisors to this individual are really important too, and not often is a step that people miss. And so in your last will and testament, I think that, one, make sure you have a last will and testament.

Michelle: Getting to that point is so important, right? Because there's so many people that put that off or they just don't address it, you know?

Rebecca: Right. Yeah. And the other thing is that I have found with a lot of my clients that are business owners as they are very typically very independent people who do it

themselves. I can get this done, get this task accomplished, where they sometimes will opt more for the will that you can find online opposed to actually meeting with an attorney to go through that document. And sometimes that will work. But I have found that a lot of times those documents, there's things that are missing that can create a nightmare when the individual passes away. So it's important to make sure that you meet with an attorney to have these documents done. I think that that's a key just so they can kind of walk you through all those different nuances.

Michelle: Yeah, I think that is true in a lot of areas for entrepreneurs, you know, they do think that there's things that they can just handle and do themselves. But initially it might be okay. But later when things get more complicated or they have certain things that have to be done in a certain way, it is time to let go of those reins and seek out the help of a professional. We see that on our end all the time.

Shawn: Yeah. I mean, you get what you pay for. So if you're doing it yourself and you're paying nothing, you know that whatever you've done you could know, that's what it's worth. So I think having professionals deal with these complicated matters, it's not cut and dry and it's not easy. So you need to have somebody who is a professional, who knows what they're doing to take over the reins, like you said, to do this.

Rebecca: Yeah, yeah, yeah. I agree. And, you know, of course I'm an attorney, so I'm going to tell you that I agree with that. Right.

Michelle: But, you know, you see then you also see the repercussions of people not doing it the right way. So, you know, sometimes your perspective is very different from somebody who only has themselves to think of, you know?

Rebecca: Right. Right. Yeah. And I think, you know, a lot of people think, okay, well, this is a simple document and has these kinds of standard provisions in it. The one piece that I have found that gets missed a lot with the last will and testament is the coordination of the will with the business documents. So a lot of times when the business is formed, of course, you're going to have your formation document depending on the type of business that you form. And a lot of times within those bylaws, within the articles of incorporation, there is going to be language within those documents that explains what happens when you die. So you really need to have a coordination of those documents with your last will and testament to make sure that they're not saying two different things. And that is a piece that can get easily missed and something that you want to make sure that when you're meeting with your company to do your will, that you bring a copy of all of those basic documents that you formed at the time you form your business so they can review those in light of what you're saying in your will.

Shawn: And that's it.

Michelle: That's really important.

Shawn: It is because a lot of people, you know, they create LLC on their own online or they

do just the simple articles of organization with the state but they don't have the formal operating agreements or articles of incorporation that kind of lay out all of that language. It's just, you know, a formality to take to get organized in the state. So, yeah, that piece could be missing when you go to talk to your attorney for state work.

Michelle: Wow. Yeah.

Rebecca: Yeah, yeah. And the other piece of this, which I briefly mentioned, the idea and the concept of a power of attorney. And that plays right into this with the basic formation documents as well in your operating agreements and your bylaws is what happens. So your Will, of course, explains what happens if you die. Right. And most likely, your business documents will as well. But what happens if you get sick? What happens if you become incapacitated? Who's going to step in?

Michelle: Yeah. Yeah.

Rebecca: So that's the piece. Another big piece of the estate plan that owners of small businesses really need to think through is not only what happens if I die, but what happens if I'm not capable of running this business anymore? What? What's going to happen then? And that's where the power of attorney documents comes into play. So a durable general power of attorney. And that document is going to explain in the event of your incapacity or in the event of your disability, where you're not capable of managing your financial affairs anymore, who's going to step in and take over for you?

Shawn: Could you potentially draft the power of attorney to have different people doing different things? So. So if you have a business and you have, you know, say a business partner or some other person within your business that you could trust to do the banking and stuff like that. Could you draft the power of attorney just for that specific purpose and then have somebody else do the, you know, the personal affairs?

Rebecca: Yeah. You could do something like that. So most likely what you're going to see is one individual appointed to do everything. But if you had a specific situation where you thought, hey, well, this person is going to be really good at handling these things, but this person might be good at handling these things. We could certainly draft a document and a way to do that because within that power of attorney, the other key point is that you should have business specific powers in the power of attorney. So your basic power of attorney document may not have that. So that's where if you're if you're just going and getting a form online or you had a document done a long time ago before you formed your business, you're going to want to pull that out and look to see.. 1. Is it still the person that you would want to make these decisions for you? And 2. Does the document a draft the specific powers this individual would need if you would become incapacitated?

Michelle: That's good information.

Rebecca: Yeah. And so along with that, you know, that specific general power of attorney, the other document that I have to mention, just because as an estate planner, I can't skip over the other document, even though it doesn't specifically deal with business provisions, is an advanced health care directive. And that document I mean, most people think of that one as when do you want the plug pulled document? Yeah, well, it's not the most pleasant thing to think through as far as, you know, what are your wishes regarding end of life care? But if your family would find themselves in the situation where they have to make those tough decisions for you if they know what your wishes are, you know, that makes things a lot easier.

Shawn: And it's important because as people are living older and older, their quality of life in their older years is so much more diminished that, you know, they may they would I know I would want something to help, you know, make that easier on everybody.

Rebecca: Right? Right. Yeah. And that's where that document is going to come into play. So that advance directive is going to have the appointment of a health care agent to make decisions for you. But then it's also going to walk through those tough decisions about, you know, if you develop an end stage medical condition, would you want to be kept alive artificially with machines? Would you want tube feeding? Walk you through all those difficult things. But, you know, like we started off the conversation saying how, you know, you need to make sure that you talk to these people that you're appointing as your agent. So that way they know they're having a big role in your life. And I think the same thing with this health care directive, too. So having a conversation with your family regarding your wishes on end of life care is so important. You know, the first time they hear about what you want regarding medical care, shouldn't be when they pick up the document that, you know, you should have a conversation with them about that beforehand?

Shawn: Right.

Michelle: So these documents that we just talked about are considered the building blocks of the foundation that you would say, okay, at a bare minimum, these are the things that you would need to consider.

Rebecca: Yeah. Yep. So those are your basic building blocks. So, you know, your last will and testament, your general power of attorney and your advanced health care directive. And then, of course, the nuances with those documents where you are a small business owner is coordinating that with your documents that you have in the formation of your business. And just making sure that everything coordinates and speaks to each other is really key. And then as far as you know, if you need any more complex estate planning document that really depends on your individual situation. And what I mean by more complex documents is where we get into trust planning, you know, so whether you would need any kind of revocable living trust or more asset protection planning in place depends on your specific financial situation, the makeup of your estate, and what your goals are for your estate plan.

Michelle: Right? So when I think about some of the people in our community, they may have, let's say, a will or something like that that is already set up, but maybe they need to

change that. Is that, you know, how often can you do that and can you speak to that a little bit?

Rebecca: Yeah. I mean, you can change your Will any time. So I have a few clients that will call me on a regular basis. You know, somebody there's a family fight or something happens, but I'm getting a call to change things all the time.

Michelle: Like, let's go with this is like permanent and not just keep changing all the time. Yeah, yeah, yeah.

Rebecca: So I think as a rule of thumb, any time something major happens in your life, right? So if a child gets married and you have grandchildren, if there's a divorce in the family, somebody passes away. There's a big change to your estate as far as an increase in your assets or, you know, maybe you get a large inheritance from someone else. Those are all key triggers as to when you should have your documents reviewed. But I always tell my clients that at least on an annual basis, it doesn't hurt to pull those documents out and just look them over and just say, you know, is it still what I want? You know, maybe something to the calendar on an annual basis that you just pull those out doesn't mean you need to go to an attorney and have them reviewed, but at least that way you're reviewing them to make sure it still says what you want it to say.

Michelle: Yeah, I mean, because you could set up your will and your business plan and are all tied together and or your business documents are all tied together and you decide, you know, five or six years down the line that you're going to add a partner to your business. And you probably aren't thinking, how is that affecting my estate? You know? And so sometimes I think people don't realize that those events like, you know, even if it's a small event where, okay, I'm just going to give that, you know, they're going to get a little bit of interest. They're not taking over the whole business. That's still a component that's changed within the business and needs to be addressed.

Rebecca: Right? Yeah, definitely. And I think the other triggering point that people don't think about too, I think a lot of times when you're very young, you get married, you have kids, you do a Will because you are concerned about what happened to your children, minor kids. Yeah. And then things change, right? So you build more wealth, you start a business. Your children now are over the age of 18, maybe. And I'll see these old documents where no one ever changed anything because they thought, well, we did it, you know, we're done. So I think that, like I said, at those big triggering moments is definitely when you need to go in and actually have a formal review with an attorney to make sure everything is updated.

Michelle: Yeah. So and in that review, I mean, you guys go through in depth what that person has, right. And things that need to be considered because I would imagine you need to kind of get a good snapshot as to exactly what's happening.

Rebecca: Yeah. So typically those reviews, I mean, they're going to be very specific to each attorney. Each attorney will have a different style for how they conduct those

reviews, but it should involve some kind of overview of the makeup of your estate. Right. So what's the total gross value of your estate? What kind of assets do you hold? Are there any specific concerns that you have? Maybe you have a child that's not good with money and you're concerned that if they get an inheritance, they're going to spend everything. Or do you have a grandchild with special needs that we need to be concerned about? So usually the review is going to involve a kind of a conversation regarding all those things. And then also where you own a business, it's going to be, like I mentioned before, a review of your formation documents to make sure those are all what you want them to say. And there's no updates needed to happen with those as well.

Michelle: Yeah. Yeah, you got to be ready to have that conversation, I think, you know, get all your ducks in a row and figure out exactly what's going on, because sometimes there's a lot of different pieces that you may be forgetting about or old agreements that you may have had or whatever. Yeah.

Shawn: A lot of people don't like to have those conversations or don't want to have those conversations. And it just becomes so important to really when you pass away that those things are in place to help, you know, your heirs, to help the people that have to deal with all this. It's great to hear so many people that are just overwhelmed by all of the stuff that has to be done with some of them passing away. And they just can't get a handle on it. They can't comprehend all of the stuff that has to be done.

Rebecca: Right.

Michelle: So go ahead, Rebecca. Sorry.

Rebecca: Yeah, no, I was just going to comment on that because I think that, you know, people do get really overwhelmed. And I understand that. I mean, it's a lot of information that we're going over, a lot of different things, a lot of big decisions to think through. But I would encourage everyone to kind of take that first step. And even if you don't have everything, so maybe you have no idea where your operating agreement is and you have no idea where your old will is, it's good to have the meeting and start that conversation. You know, as busy professionals, I mean, I'm sure you both know I know as well, you know, you get caught up in those day to day things and it's hard sometimes to pull yourself out of that and realize, you know, this is super important. I need to make time to at least start this conversation, even if I don't have everything in order. Um, so I just wanted to comment on that because it can be overwhelming to the point where people don't make that phone call.

Michelle: Don't do anything. They just say, like, Oh, I'll just address it when I have more capacity to do that or more energy to do that. Instead, then they find there another two years down the line, they still haven't addressed it. And then you're playing Russian roulette with, you know, the future there a little bit.

Rebecca: Right. Right.

Michelle: So what happens when let's say you have a business and you had maybe an old Will

or something very basic and you do pass away what you know, and maybe the old Will doesn't even address the business. How does that play out in a lot of cases and just speak generally obviously?

Rebecca: So generally and and I actually I'm dealing with two situations right now with a state that they had businesses and there was nothing specific to them in the Will. So where that happens generally that the business is going to fall on what we call the residue of the estate where it's just divided in accordance with the residue. So for example, if you have four kids and you say everything goes equal with the my kids and that's what's going to happen with the business, that can get complicated because, you know, at that point, depending on what the type of business is, you know, I'm going to just think generally because sometimes you have a child who's interested in continuing the business and then we're doing something different. But usually one of the first steps is the valuation of the business, right? So that's usually the starting point for any estate administration is to determine what the value of the business is and that typically we're looking to people like you, Michelle and John to help us with that valuation and where we're lucky enough to have good professionals to work with. That process can go easy. If you have a situation like what I have, where there is a messy tax situation where taxes haven't been filed for the business in a long time and the records weren't kept very well. It can get really messy and really complicated.

Michelle: Yeah, because there's a lot of cleanup that has to take place where there's powers of attorney or the executor or executor. So whatever to do to get caught up to. Right.

Shawn: So yeah, that yeah. Who has those records to be able to produce all those financials? Who's going to be, who's going to do the taxes and get it all caught up and then who's going to pay for it? Like, all right.

Michelle: Where's that coming from?

Rebecca: Yeah, yeah, yeah, yeah. So yeah. So generally, you know, when any time someone passes away and there is a business, the first step, like I said, is the valuation. And then the next step is going to be, you know, whether the business is going to be continuing or are we going to wind up liquidating, selling the business. So there are usually a lot of decisions that have to be made pretty quickly where there is a business involved, as to what's going to happen. And, you know, a lot of times if the Will doesn't speak to the business that specifically, then we're looking at those business documents. But if both are silent as to what happens when somebody passes away, then that's where it's really up to the executor to make those decisions as to what's going to happen with the business.

Michelle: Mm hmm. Wow. Yeah. A lot of moving parts. So, again, when you're thinking about who's going to be the one to do all these things, you know, obviously when someone passes away, they've kind of known that they didn't file their taxes. But, you know, you may not think about that, obviously, or it may be sudden or something like that. But you know, what happens in the event that there are some issues like that and problems like that, are you picking the right person that's able to handle those types

of things? You know, sometimes we obviously don't know when we're going to pass. And it may have been something on your plate to do, but you didn't get a chance to do it. So.

Rebecca: Yeah. And that's where I think, you know, it's easy for me to sit back and say keep good records, because when you're in the midst of it, I know it can get overwhelming and you have a lot that's coming at you each day. But in situations where we're dealing with an estate, you know, having those good records is so important to make sure that not only are we doing the correct thing now, now that we've passed away or now that you are incapacitated, but also to make sure that everything was done properly during your life, to make sure there's no liability for the estate.

Michelle: It's good information. So are there any other things that we should be aware of in this whole conversation? I know it's very big and you probably can have whole day seminars on these things. We don't want to overwhelm the regular business owner too much at one time.

Rebecca: But yeah, I think, you know, we talked about those basic documents. I think that's a key takeaway for us today is to make sure that you have those basic building blocks in place. So your Will, your general power of attorney, and your advance directive as well as your business documents. The other piece of this, I think that I'll briefly mention and like you said, I'm sure we can have a whole nother conversation on that if you know each state is going to have different rules regarding taxes as far as inheritance tax. And then also you have a state tax implications. So I think it's important that when you are talking about your estate plan with your attorney, you have an idea of what the tax ramifications are going to be when you pass away. And, you know, I have clients that laugh and say, well, I don't care. I'm not going to be here to pay the taxes.

Michelle: Yeah, who cares? But you're leaving it for people that you love to handle.

Rebecca: Right. Right. And I think it's an important conversation because you want to make sure that there's enough liquidity in your estate to pay for those things, especially if the main asset, for example, is your business and maybe your children do want to continue operating that business, then you need to figure out, well, if we're not going to be liquidating anything to pay for final expenses and taxes, how are the kids going to come up with the money to do that? And that's where having a conversation with your estate planner and then also pooling in that situation, a financial planner to to have a conversation about where are we going to have liquidity to pay these expenses and what are we looking at?

Michelle: Also, your insurance provider, your insurance broker has a big part in this. We always talk to people about having the proper insurances and also having if you have a business and there's multiple owners having key life, keyman life insurance can really be helpful as well because who wants to be in business with somebody and then end up that person passes away and you end up in business now with the spouse. Right. And is that really what you want? So there's all kinds of it's interesting how

that everything kind of interplays.

Rebecca: Yeah, yeah, yeah. You're right. And, you know, insurance can oftentimes be a really key component to that plan and offering some options and liquidity to be able to buy out people and pay the expenses and do all of that. Yeah, I agree with that 100%.

Michelle: Yeah. And one thing I wanted to mention is sometimes when you're working with an accountant and you're working through tax matters on a personal level, or if it's your, you know, executor that's coming to an accountant to get things wrapped up for you, the accountant has a power of attorney, that is for the IRS and for tax documents. This is different from a legal power of attorney. So just so that people are aware, when you're working with your accountant and they're saying, well, I want to act on your behalf in front of the IRS, you know, there's things I can get for you, documents I can obtain for you, find out things, but I need a power of attorney. Just know that that's different from the power of attorney that was signed for legal purposes.

Rebecca: Mm hmm. Yeah, good point.

Michelle: So, Rebecca, thank you so much for joining us today. We're going to provide everybody with your information. And if they are in the state of Pennsylvania and want to reach out to you, you have so much knowledge in this area. And so we are just thankful that you were here with us today.

Rebecca: Yeah, thank you for having me.

Michelle: Yeah. Thank you so much. So, everybody, thank you for joining us. And you know, we just wanted to make sure that you like and subscribe to us on YouTube and follow us. We also have a website, ModernCPAOnline.com We also are starting a master class at ModernCPAOnline.com/Masterclass If you're interested. So thank you, everybody, and have a great day. If you find this podcast helpful, then like subscribe and follow us on social media