The AT Law Guide to Wealth Generation, Growth, and Preservation

ESPECIALLY FOR TWO DEGREES
OCTOBER 27, 2016
Firm Overview

• We are a husband & wife-owned law firm helping individuals, families and the owners of privately-held and family-owned businesses in the areas of:
  – Trust & Estates
  – Business
  – Real Estate
AT Law in the News

• Both Thais & Saeed named by peers for Top Lawyers issue of Houstonia Magazine – Publication Dec 2016.

• 2015 Texas Family Business of the Year Finalist – Baylor University’s Institute for Family Business.
It pays to plan when people are happy, healthy, and getting along.
3 Phases of Wealth

1. Wealth Generation
2. Wealth Growth
3. Wealth Preservation
Wealth
Generation
Laying a proper foundation.
Interesting Business Statistics

• There are 24.2 million family businesses in the United States.
• 62% of workforce employed by family businesses.
• 64% of annual GDP results from family businesses.
• Women own 17% of family businesses.
• 59% are owned by an individual or married couple.
• 60% of family business owners have not identified their successor.
• 66% of employees are seeking a new job opportunity.
Business Formation Package

- Choice of entity advice
- Entity Formation
- Ownership Agreements
  - LLC Operating Agreements
  - Corporate Bylaws/SH Agreements
  - Partnership Agreements
- Federal Employer Identification Number
- Assumed Name Filing
- Amaral Tellawi’s Business Owner Package
- 12 Months of Corporate Counsel Retainer Program
“You Can Choose Not to Decide, You Still Have Made a Choice” — Freewill, Rush (1980)

• Did You Know? Some Random Facts.
  • DBA is not an entity.
  • Sole proprietorships & general partnerships require no written agreement or filing.
  • Participation is NOT incidental to LLC ownership.
  • Corporations went out of style decades ago...but may be making a comeback.
  • SMLLC charging order protection may be bolstered by adding another member.
  • “Series LLC” is almost always the wrong answer.
  • Texas is the best state for business, in our humble opinion.

Whatever you do, choose something.
Basic LLC Startup Documents

Certificate of formation
- Official state filing document.
- A small price to pay, but don’t stop there

Operating agreement
- The “rules” of your company.
- Lays out the agreement between the partners/investors.
- The first place a Plaintiff’s lawyer looks

EVERYTHING ELSE
- EIN; DBA; Consents, Minutes, & Resolutions
Final Thoughts

- Laying the proper foundation for your business.
- Eliminating doubt.
- Having the hard conversations FIRST.
- Testing a partnership before success (or failure).

But it’s not just about the business...
Basic Estate Planning
What Should One Have in Place?

Last will and testament
• Distributes your assets to beneficiaries after death, outright or in trust.
• Appoints an executor/trustee who will manage Decedent’s last affairs.
• Appoints guardian for minor children, if any.

Commonly missed:
✓ Trust provisions for minors that last beyond age 18.
✓ Special Needs Trust provisions in case a beneficiary is receiving government benefits when the inheritance is distributed.
✓ Lack of no contest clause.
✓ Explain what was done and why!
✓ Remind of non-testamentary transfers.
☐ Conservative or ☐ Liberal standard?
  ☐ Should the child’s other resources be considered before making distributions from the trust? ☐ Yes ☐ No

☐ Require educational achievements?
  ☐ What level? ________________
  ☐ Give certain gifts at each graduation? ☐ Yes ☐ No
  ☐ How much each? ________________

☐ Allowance for a car at age 16?
  ☐ Maximum allowable? ________________

☐ Drug test required for distribution?
  ☐ For every distribution?
  ☐ Only for final access to remaining balance.

☐ Gift for wedding or engagement?
  ☐ Maximum allowable? ________________

☐ Gift to buy a home?
  ☐ Maximum allowable? ________________

☐ Gift to start/buy a business?
  ☐ Maximum allowable? ________________

☐ Payment of travel for visiting family member?
  ☐ Maximum allowable? ________________
  ☐ Frequency?
10 Tips for Choosing a Guardian for Your Children

1. Think beyond the obvious choices.
   ✓ You don’t need to limit your list to close family members.

2. Don’t stress about finances or the size of someone’s house.
   ✓ You can take care of the finances with what you leave.
   (That’s what adequate life insurance is about)

3. Consider values and philosophies.
   ✓ Ask yourself which people on your list most closely share your values and philosophies
   with respect to your:
     • religious beliefs
     • moral values
     • child-rearing philosophy
     • educational values
     • social values

4. Personality counts.
   ✓ Are they loving/affectionate?
   ✓ Are they good role models?
   ✓ Are they patient?

5. Consider practical factors.
   ✓ How would raising children fit into their lifestyle?
   ✓ If they’re older, do they have the necessary health and stamina? Do they really want to
     be parents of a young child at their stage in life?
   ✓ Do they have other children?
   ✓ How close do they live to other important people in your children’s lives?


7. In the end, trust your instincts. If you truly consider what matters to you most, you will probably be
   able to make some reasonable choices.

8. Select a temporary as well as a permanent guardian.

9. Write down your reasons:

10. Talk with everyone involved. If your children are old enough, talk with them to get their input
    as well.
My Healthcare document package

• Statutory Durable Power of Attorney;
• Medical Power of Attorney;
• Directive to Physicians;
• HIPAA Authorization;
• Declaration of Guardian for Self;
• Declaration of Guardian for Minor;
• Appointment of Agent for Disposition of Remains;
• Instructions for Disposition of Remains; and
• Anatomical Gift form.
Wealth Growth

The Uphill Battle
Growth brings changes

- Unmarried couples
- Blended family
- Age, health & financial discrepancies.
- Planning for same-sex couples.
Exposure areas for Unmarried Couples:

• No unlimited marital deduction.
• No joint filing of Federal tax returns.
• No intestacy protections.
• No rollover of retirement benefits.
• No automatic revocation upon divorce.
• Hospital access & funeral arrangements.
Blended families

Dealing with Complex Family Structure & History

• Do spouses and children get along?
• Do the spouses have children in common and from other relationships?
• Do the new kids and older kids get along?
• How would feelings/relationship change after a death?
• High emotions or disconnect?
Age, Health & Financial Discrepancy

- Clients are living beyond their expectations.
- Thus spending more than they planned.

Balance planning with these considerations:
1. Potential costs of long-term care for older spouse;
2. Maintaining lifestyle of younger spouse;
3. Desire to leave a legacy to kids & others;
4. Potential depletion of estate due to long-term care costs.
Data on Same-sex couples

• 46,401 same-sex couples living in Texas.
  – 581,000 couples in US ~ 2009 Census Bureau estimate.
  – That means almost 5 same-sex couples per every 1,000 households.
  – *The Williams Institute’s analysis of the 2010 US Census.*

• 48% of Texans support same-sex marriage.
  – *Texas Tech University, April 2014.*

• Same-sex couples raising children are more common in the South than in any other region in the United States.
  – *UCLA demographers analyzing 2010 Census Bureau data, New York Times, January 18, 2011*
In business, growth brings refinement and funding.
Developing “Auto Pilot”

- Are you selling a job or a business?
  - Refinement, fine-tuning, & formalization phase
  - It’s called an “organization” for a reason
    - All components toward one goal
      - Communication
      - Data collection
      - Analysis
      - Action/Implementation
  - All without you

- Risk & Reward
  - Tolerance Establishment & Control
  - Contract risk
  - Liability reduction
  - Asset protection
Taking it to the Next Level: Getting Money

- Investors & Private Equity
  - IPOs
  - Regulation D Private Placements
    - A private offering to a small number of carefully selected investors.
    - Who is an “Accredited Investor?”
    - The additional documents
    - Common Pitfalls
      - “C” too early
      - Delaware
- Loans
  - A “cheaper” alternative?
  - Giving away the farm
  - Convertible Notes
Private Placements & Limited Offerings

- Funding stage in which securities are sold not through a public offering (IPO), but through a private offering to a small number of carefully selected investors.

- The Accredited Investor Exemption

- Operative Documents
  - Private Placement Memorandum
  - Subscription Agreement
  - Ownership Agreement

- Typical Structures
  - Limited Partnership
  - LLC
A Typical Offering Structure

• Most Common Structures
  • Limited Partnerships
  • LLCs

The General Partner(s) controls the entity and makes all day to day decisions. The GP is typically an LLC controlled by the founders, who may also be limited partners. The GP is subject to full liability exposure for its actions and the actions of the partnership.

The Limited Partners are the investors and potentially the founders. They cannot participate in the management of the company but enjoy significant liability protection and potentially “passive income” tax treatment.
Wealth Preservation

Leave a legacy worth sharing!
## Brief history of our Transfer Tax System

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gift Tax</td>
<td>$1 million</td>
<td>$1 million</td>
<td>$5.12 million³</td>
<td>$1 million</td>
<td>$5.25 million³</td>
<td>$5.34 million³</td>
<td>Hillary will propose a lowering of the estate tax exemption to $3.5Mil</td>
</tr>
<tr>
<td>Estate Tax</td>
<td>$3.5 million</td>
<td>Unlimited with modified carryover basis or $5 million and stepped up basis</td>
<td>$5.12 million² &amp; ³</td>
<td>$1 million</td>
<td>$5.25 million² &amp; ³</td>
<td>$5.34 million³² &amp; ³</td>
<td>Trump will propose the abolishment of the estate tax.</td>
</tr>
<tr>
<td>GST Tax</td>
<td>$3.5 million</td>
<td>$5 million</td>
<td>$5.12 million³</td>
<td>$1.4 million³</td>
<td>$5.25 million³</td>
<td>$5.34 million³</td>
<td></td>
</tr>
<tr>
<td>Rate</td>
<td>45%</td>
<td>35%¹</td>
<td>35%</td>
<td>55%</td>
<td>40%</td>
<td>40%</td>
<td></td>
</tr>
</tbody>
</table>
Legislation impacting Wealth Preservation

WHAT CAN WE EXPECT IS AHEAD?
Estate Tax Regulations

• In August, the IRS proposed a regulation that could have significant impact on wealth transfer events.

• Proposal will eliminate most discounts on transfers of entity interests (including family limited partnership, corporations, and LLCs).

• Public hearing to be held on December 1, 2016.

• Speculation is that the regulation will pass this year.
  – Trump will likely reverse this.
Stretch IRAs

• Senate Finance Committee advanced two pieces of legislation relating to retirement issues.

• One bill includes a provision relating to “Stretch IRAs” that places restrictions on post-death payments of IRAs as a means of offsetting its cost.

• Specifically, the proposal would place a five-year limit on post-death payments for those who inherit a retirement plan with more than $450,000.

• There is a significant chance that a restriction on stretch IRAs will be signed into law this year.
Why Businesses Don’t Survive Generational Transition

• 60% of typical breakdowns results from relationship issues.

• 25% of typical breakdown arise from lack of preparation for succession and training of heirs.

• 10% of typical breakdowns arise from tax or other estate planning issues.

LEGISLATIVE UPDATE: The Bipartisan Budget Act of 2015 (H.R. 1315)

• Goes into effect in 2018
• Repeals the partnership audit rules of TEFRA (Tax Equity & Fiscal Responsibility Act of 1982).
• Previously, each owner of a partnership was responsible for their own taxes.
• Now, the IRS can collect taxes associated with audit adjustments for “imputed underpayments” at the partnership level.
• Effectively an entity-level tax on partnerships themselves.
• Companies will feel this much sooner than 2018, impacting valuation, transfer, and protection of partnership interests.
• Advice: Plan early and learn how to opt out.
Succession Planning: The buy/sell agreement

- What happens if an owner leaves the business?
- What happens if the owners can no longer get along?
- How will disputes be resolved?
- What happens if an owner is disabled or dies?
- Should spouse run business? Income Needs?
- How will the business interests be valued?
- Should particular assets be directed to a particular owner or his/her successors?
Do-It-Yourself Legal Documents, just don’t
What do you get?
LegalZoom Disclaimer

LegalZoom is not a law firm, and the employees of LegalZoom are not acting as your attorney. LegalZoom’s legal document service is not a substitute for the advice of an attorney.

LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction.

LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies.

This site is not intended to create an attorney-client relationship, and by using LegalZoom, no attorney-client relationship will be created with LegalZoom. Instead, you are representing yourself in any legal matter you undertake through LegalZoom’s legal document service. Accordingly, while communications between you and LegalZoom are protected by our Privacy Policy, they are not protected by the attorney-client privilege or work product doctrine.

LegalZoom provides an online legal portal to give visitors a general understanding of the law as well as to provide an automated software solution to individuals who choose to prepare their own legal documents. To that extent, the site publishes general information on legal issues commonly encountered.
Therefore, if you need legal advice for your specific problem, or if your specific problem is too complex to be addressed by our tools, you should consult a licensed attorney in your area. Visitors to our site may obtain information regarding free or low-cost representation through your state bar association or local legal aid office.

This site and some of the articles on this site contain links to other resources and businesses on the Internet. Those links are provided as citations and aids to help you identify and locate other Internet resources that may be of interest, and are not intended to state or imply that LegalZoom sponsors, is affiliated or associated with, guarantees, or is legally authorized to use any trade name, registered trademark, logo, legal or official seal, or copyrighted symbol that may be reflected in the links.

LegalZoom is not responsible for any loss, injury, claim, liability, or damage related to your use of this site or any site linked to this site, whether from errors or omissions in the content of our site or any other linked sites, from the site being down or from any other use of the site. In short, your use of the site is at your own risk.
4. Rocket Lawyer Is Not a Law Firm and Does Not Provide Legal Advice

Rocket Lawyer provides a platform for legal information and self-help. The information provided by Rocket Lawyer along with the content on our website related to legal matters ("Legal Information") is provided for your private use and does not constitute legal advice. We do not review any information you provide us for legal accuracy or sufficiency, draw legal conclusions, provide opinions about your selection of forms, or apply the law to the facts of your situation.

More simply put:

Rocket Lawyer does not provide legal advice—only a licensed attorney can do that. Although we can connect you with independent lawyers through our On Call network, Rocket Lawyer is not responsible for the advice they give.

If you need legal advice for a specific problem, you should consult with licensed attorney.

Neither Rocket Lawyer nor any Legal Information provided by Rocket Lawyer is a substitute for legal advice from a qualified attorney licensed to practice in an appropriate jurisdiction. As Rocket Lawyer is not a law firm, please note that any communications between you and a Rocket Lawyer may not be protected as confidential information under the attorney-client privilege doctrine.

Your use of the Services does not create an attorney-client relationship between you and Rocket Lawyer, or between you and any Rocket Lawyer employee or representative. Unless you are otherwise represented by an attorney, including a Participating Attorney, you may not represent yourself in any legal matter you undertake through our Services.

Rocket Lawyer is not a “Lawyer Referral Service”. The directory of lawyers published on our website is provided to the public free of charge and is for informational purposes only. Rocket Lawyer does not endorse or recommend any attorney nor does it make any warranty as to the qualifications or competency of any attorney.
18. Disclaimer of Representations and Liability

Please read this section carefully as it affects your rights:

The information, software, products, and services made available through Rocket Lawyer may include inaccuracies or typographical errors. Rocket Lawyer and/or its suppliers may at any time make improvements or changes to our Services. Information received via Rocket Lawyer should not be relied upon for personal, medical, legal, or financial decisions. You should consult an appropriate professional for specific advice tailored to your situation. In short, your use of our Services is at your own risk.

TO THE FULlest EXTENT PERMITTED BY LAW, ROCKET LAWYER AND ITS AFFILIATES, SUPPLIERS AND DISTRIBUTORS MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE SERVICES. THE SERVICES ARE PROVIDED "AS IS." WE ALSO DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. INFORMATION AND OPINIONS RECEIVED VIA THE WEBSITE SHOULD NOT BE RELIED UPON FOR PERSONAL, MEDICAL, LEGAL OR FINANCIAL DECISIONS AND YOU SHOULD CONSULT AN APPROPRIATE PROFESSIONAL FOR SPECIFIC ADVICE TAILORED TO YOUR SITUATION.

TO THE FULlest EXTENT PERMITTED BY LAW, IN NO EVENT WILL ROCKET LAWYER, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS, REGARDLESS OF LEGAL THEORY, WHETHER OR NOT ROCKET LAWYER HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

ROCKET LAWYER'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICES SHALL IN NO EVENT EXCEED THE GREATER OF $500 OR THE AMOUNT PAID BY YOU TO ROCKET LAWYER FOR THE 12 MONTHS PRECEDING THE SERVICES IN QUESTION.
www.doitforthem.org

TRUSTS & ESTATES
BUSINESS
REAL ESTATE

832.295.0770

2519 SOUTH BLVD, 2ND FLOOR, HOUSTON, TX 77098