

WHY YOUR BUSINESS DEPENDS ON YOU HAVING A WILL

Your business is like your baby. But if one day you are unable to run your business are your children ready to take care of your baby? Often, the family business is the sole source of income for a business owner and his or her family. However, few business owners plan for the succession of their business in the event of their death or incapacitation. As the Valley's economy continues to grow, it is important for business owners to understand the importance of estate and business succession planning in the event of their incapacity. Furthermore, because many persons own assets both in the US and in Mexico, having a plan for the transfer of international assets can save both in time and costs. Below we have outlined a few reasons why, at a minimum, every small business owner should have a carefully drafted Will that meets his or her specific needs:

I. If you die without a Will the court will decide where your assets go

In Texas, if you die without a Will, all of your assets will be distributed by the law of intestacy. Generally, assets pass to your spouse with certain portions to any children. As a business owner, it is important to ask yourself if this is the best thing for your business and your family. Is your spouse willing, or capable, of making business decisions on your behalf? Is he/she ready to make decision that may affect the livelihood of your employees? If you believe that members of your family are not ready to make these decisions, the drafting of a Will which meets your individual needs, becomes increasingly important. Furthermore, with a comprehensive estate plan in place, you can ensure that your business and family members will be in capable hands in the event you become incapacitated.

II. The cost of administering your estate without a Will can be time consuming and expensive.

In Texas, because of our unique system of "independent administration," the cost of probating an estate is relatively cheap. Under this system, a person is selected the "Independent Administrator" and is charged with the responsibility of distributing a deceased assets under the terms of his/her Will. The process takes a simple court appearance and issuance of letters authorizing the administrator to handle your assets. In most cases, besides the filing of an inventory or affidavit, the independent administrator never has to go back to the court. However, if a party dies without a valid Will, or has conflicting international Wills, and the estate is comprised of debts, business, or other complex property, the administration of an estate can become costly and time consuming. In this case, the court may order

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“dependent administration” which requires the administrator to seek court approval before taking any action with the estate. Thus, if important decisions must be made in regard to your business, or decisions that could affect your family’s well being, the administrator must submit a request for hearing to the court and gain court approval. The result can become time consuming, expensive, and can put further strain on your family and estate.

III. Foreign Wills may not contain the necessary elements to ensure that your business and family’s needs are met.

As the Valley begins to benefit from the investment and interest of Non-citizens, the issues involved with foreign Wills merits their own column, but will be briefly discussed here. We have often had clients from Mexico approach believes that a Texas Will is unnecessary to dispose of their assets in the United States because they have already executed a valid Will in Mexico. While this may be true, the issues that can arise with the probating of a foreign Will make it advisable (and often times cheaper) to execute a separate Will for their US investments. For example, the lack of language for Independent Administration may result in your family paying large portions of your estate to court costs and attorneys. Moreover, tax implications with both non-citizens and resident aliens require attention from both an attorney and accountant. For example, certain tax implications may arise depending on the citizenship status of persons entitled to receive your estate. With the help of an account and attorney, a non-citizen or resident alien can plan the distribution of his estate in a manner that would save his family, or business partner, time and money. ©