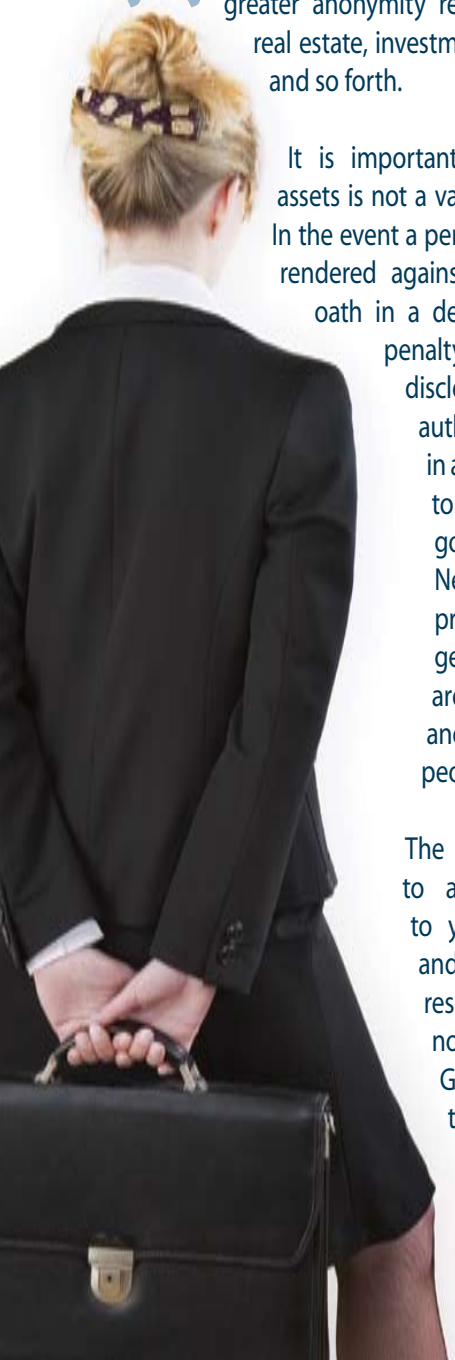
JEFFREY·BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

ACHIEVING ASSET ANONYMITY



We often receive inquiries from clients who wish to achieve greater anonymity regarding their assets, including real estate, investment accounts, business holdings and so forth.

It is important to understand that "hiding" assets is not a valid principle in asset protection. In the event a person is sued and has a judgment rendered against him, he may be put under oath in a debtor's examination and, under penalty of perjury (a felony), he must disclose his assets to the questioning authority. So, merely holding assets in a name not readily traceable back to you should not be viewed as a good way to protect your assets. Nevertheless, keeping a lower profile, maintaining privacy and generally avoiding the spotlight are viable reasons for obtaining anonymity, at least for certain people.

The first and simplest approach to anonymity is to give names to your trusts, partnerships, LLC's and corporations which have no resemblance to you and would not be easily traced back to you. General partnerships and most trusts are not registered with the State of Nevada, so titling an asset in a trust or a general partnership may prevent someone from tying the entity back to you. However, if you are the trustee of your trust, then your name appears on the title. To avoid this, you could enter into a "nominee" agreement, making someone else your trustee, but you would have power to remove him or her at any time. Regarding real estate, you can record a deed in the name of the trust, omitting the trustees' names. Generally, investment account records are confidential, so hiding the trustees' names is not nearly as important as with real estate.

What about using LLC's, corporations and limited partnerships to achieve anonymity? When these entities are formed, your attorney can sign the organizational papers which are filed with the State of Nevada, and you may use your attorney's, or some other unrelated party's, address for the entity. For a limited partnership, you will also need to name an unrelated person as your general partner because the general partner must be disclosed. Similar rules apply to LLC's (i.e., disclosing managers of LLC's) or officers of corporations. Again, if you can use unrelated parties in these roles, you can keep your ownership of the entity private and anonymous.

One additional problem to be aware of is this: if you convey real estate from you to an anonymous entity, a records search can show your conveyance of the property to the entity, thereby providing an easy way to tie a supposedly anonymous entity directly to you.

Achieving anonymity may be worthwhile, but it is not easy and is not foolproof. Nevertheless, for those who are concerned, there are techniques to reduce your exposure to unwanted attention.

table of contents

spring 2008

Making a Case for Corporate Trustees

One of the most important decisions you face with respect to your trust is the selection of your trustee(s) and successor trustees. The trustee is responsible for managing trust assets as well as making distributions of income and principal to named beneficiaries in accordance with the specific provisions of your trust. While many individuals name themselves, family members, and/or friends, others prefer to choose a corporate trustee to carry out these very important responsibilities. Some of the benefits of naming a trust company or other institution to serve as a trustee are as follows:

Confidentiality. Because of their internal controls and standardized procedures, corporate trustees are generally more likely than individuals to maintain information related to your trust estate with the utmost confidence.

Continuity and Responsiveness. You established your trust to provide for the future. Because individual circumstances easily change with illness, death, divorce or other personal dilemmas and hardships, it might benefit your trust to name a corporate trustee to ensure continuity and responsiveness for the full term of the trust.

Expertise and Experience. The financial and general well-being of future beneficiaries depends on your trustee. A trustee must be able to accept significant recordkeeping and asset management responsibilities in fulfilling their role. Just because someone is "close" to you, it may not qualify them to competently and comfortably act in the ways required by your trust indenture. A corporate trustee with expertise and experience in administering trusts and investments can be an attractive alternative.

Objectivity. While your carefully drafted trust agreement goes a long way in setting forth your directives, relations between trustees and beneficiaries sometimes become difficult and emotionally charged, even in the most loving of families. An objective corporate trustee may benefit from being an "outsider" who can make decisions free from bias and the appearance of bias, as opposed to a parent, sibling, relative or friend who is too intimately involved in family dynamics.

As a leader in the trust and estates profession, Jeffrey Burr has forged strong relationships with many superb trust companies and other financial institutions that provide trustee services in a professional and expert fashion. Please feel free to contact our office to further discuss the very important decision of who will be your trustee.

Buy-Sell Agreements

"...avoid the surprise of having the deceased stakeholder's spouse or children as new business partners."

A buy-sell agreement is most easily understood as a prenuptial agreement for small business owners. What comes to mind for most people when they hear "buy-sell agreement" is a transaction triggered by one partner or one stakeholder's death. The agreement allows the entity and/or the other investors to purchase the deceased party's interest from the estate. There are benefits to both sides of the transaction in this case. First, the estate of the deceased benefits from the liquidity received from the sale and reduces friction between the business and the estate of the deceased. Without a buy-sell agreement in place that addresses the pricing and procedures of the purchase, the heirs of the deceased might request immediate liquidation of their relative's entire interest, which could cause disruption of the business and a strain on the cash flow. Second, the remaining parties in the business avoid the surprise of having the deceased stakeholder's spouse or children as new business partners.

A buy-sell agreement triggered by death is often funded by life insurance where the benefits of the policy provide the liquidity necessary to cash out the deceased stakeholder's estate. The policy would be owned and paid for by the business in a redemption situation. Another method is to have each stakeholder purchase a policy on every other stakeholder, an arrangement called a cross-purchase. A relatively new technique is the use of an LLC as the owner and beneficiary of the policies with each stakeholder as a member of the LLC. This combines many of the benefits and eliminates most of the drawbacks of the two traditional approaches. If you have further questions, an attorney from our firm would be happy to meet with you.

Triggers, other than death, for a buy-sell agreement that should be considered include the following:

- Permanent disability of a stakeholder
- Retirement, change of employment or competition by one or more stakeholders
- One stakeholder's divorce
- Voluntary transfers outside the current circle of investors
- Voting or management deadlocks
- Oppression
- Buyout on demand

Contemplating these complications beforehand can save time, headaches and money. Speak with one of our attorneys today about how a buy-sell agreement can benefit your family business.

FIDUCIARY DUTY OF SUCCESSOR TRUSTEE

Many of our clients choose to appoint family members or trusted friends to serve as the successor trustee of their trust agreement in the event of their incapacity or death. While the nomination of family members or other trusted friends is understandable due to the existing relationship of trust, often the named successor trustee is unaware of the time commitment, the fiduciary duties and the potential liability associated with the role of trustee.

A trustee has a number of fiduciary duties, including the duty to act in accordance with the trust agreement, the duty to act in good faith, the duty to act in the best interest of the beneficiaries, the duty of loyalty and the duty to protect the trust property. In fulfilling these duties, it is vital to avoid any act of self-dealing, imprudence, neglect, mismanagement or other breach of fiduciary duty. There are several uniform acts, state statutes and case law, which impose affirmative duties on trustees to take specific actions and impose liability for the failure to do so.

As part of a trustee's fiduciary duties, it is very important to keep detailed records, including complete accounting records of trust assets and disbursements made on behalf of the trust. It is very important that the trust accounts and records remain separate from the trustee's personal records to protect from accusations of self-dealing.

A trustee is responsible for the management of all stocks, bonds and other securities. The trustee has a duty to diversify the trust investments, keeping in mind the different needs of distinct classes of beneficiaries. This duty to diversify extends to allocating administration expenses between income and principal of the trust to ensure impartial administration among different classes of beneficiaries. This duty to diversify should be carried out based on the terms, purpose, requirements and other circumstances outlined in the trust agreement.

The time of holding trust assets following death is within the trustee's reasonable discretion. If the trust is a will substitute and assets are to be liquidated shortly after the grantor's death, it is advisable to liquidate securities to avoid losses if the market declines.

A trustee also has the duty of marshaling, safeguarding, inventorying and accounting for all trust assets. Regarding liquid assets, an accurate record must be kept of any deposits into and withdrawals from any trust account, showing the amount and sources of each deposit and the amount and purpose of each check drawn, so as to be reflected in the subsequent accounting for the Trust estate.

For many individuals, serving as a successor trustee may be a liability or a burden that they are not comfortable with or may require a time commitment that a potential trustee cannot afford. We recommend that the creator of each trust consider these issues in the nomination of successor trustees and examine if their intentions may be better carried out by a professional trustee.

JEFFREY BURR
ESTATE PLANNING & PROBATE ATTORNEYS
2600 Paseo Verde Parkway
Henderson, NV 89074

Welcome

JEFFREY BURR IS PROUD TO WELCOME
ASSOCIATE ATTORNEYS

John R. Mugan *and* Jason C. Walker

TO OUR TEAM!

JOHN R. MUGAN

JASON C. WALKER

Main: 2600 Paseo Verde Parkway • Henderson, NV 89074
West: 7881 W. Charleston Blvd., #240 • Las Vegas, NV 89117
***Main:* 433.4455 • *West:* 254.4455 • jeffreyburr.com**