

The “Daily Plan-It™”

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Simple Will Causes Family Business a Complex and Expensive Problem

Most business owners want to keep things “simple.” Nothing fancy, just “plain and simple.” The business owners try and fit their often-complex life and growing business into a simple word-processed Will. Once it’s done, they assume that everything will work out “just fine.” They work under the false assumption that “everyone understands what I want.”

Who Pays the Debt on the Family Business?

A recent Florida appellate case illustrates how a “simple will” led to a lawsuit and a complex problem. Jim Woodward and his son Jay Woodward ran a sugar cane business together in Florida. The business operated through a general partnership that operated four farms on separate pieces of real estate. Before Jim’s death, they consolidated all of the debt of the business on one of the farms. Jim died. Ellen Smith, Jim’s personal representative (Florida’s term for executor) probated the estate. (see Woodward v. Smith, No.2D07-713 April 19, 2008)

Dad’s “Simple” Last Will and Testament

Jim’s will provided that after he passed away, his business would go to his son Jay. About two years into the probate process, the Personal Representative sold one of the farms and used the proceeds to pay off the business debt. She went to transfer the business to Jay pursuant to his father’s Will, but one of Jay’s brothers objected. The brother and his siblings were “residual beneficiaries” (they got whatever money was left after Jay got the business). Their point was that Dad’s simple Will never addressed whether Jay was to receive the business free of debt. When the one farm was sold for \$241,805.81, those proceeds should have been shared among the residual beneficiaries and not used to give Jay the business debt free. The problem was that Dad’s simple Will never addressed whether Jay was to receive the business free and clear, or whether he was to receive the business with the debt attached. The court ruled that since Dad never specifically addressed the issue, then the debt was attached to the business. Jay was stuck with debt and the residual beneficiaries received the benefit of the proceeds. Now Jay has less real estate and more debt on the business.

Helping Business Owners Think it Through

This case is a great example of “simple” costing a lot more later. Whether it is a business, vacation home, investment real estate, lake cabin, homestead, car, boat, plane or train, the lack of thinking through the debt issue can cost everyone more later.

Our Recommendation; Warn Your Business Owners About This Case!

If you are working with a business owner, we recommend that you first use a living trust. A trust usually reduces the risk of court fights. Second, we recommend the trust be carefully worded with clear and redundant instructions about what should happen to the business. Third, it needs to be updated whenever something significant impacts the business like debt restructuring. Feel free to share a copy of this issue with business owner you care about so their families do not have to suffer this type of problem with their family.

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