



Devil's in the details

by Robert Goff

Handle the detail of properly titling accounts and equipment to avoid trouble

Lately I have noticed a great deal of problems with both business clients and estate planning clients concerning properly titling property.

Admittedly, checking the title to equipment and accounts is a boring detail that not many business people can or want to take the time to do.

However, properly titling property plays a crucial role in any number of scenarios, such as determining what property is being sold in a business sale, determining what property is subject to a lien, determining what property is subject to liability, as well as what happens to property in the event of death.

Most individuals only have to make one decision regarding title to their property. Do they hold title in their name alone or in both their name and their spouse's?

Adding a spouse's name to a bank account means that the spouse can access all the money in the account. Sometimes this is desired, sometimes not. It usually depends upon how much the spouse is trusted.

Title gets a little trickier when there is a business entity or revocable trust involved.

A limited liability company, corporation and revocable trust are all distinct legal entities, separate and apart from their owners.

Limited liability companies and corporations are created to shield the personal assets of the owners from liabilities of the business.

This limited liability is lost if the business entity is treated as just the alter ego of the business owner. In other words, in order for the business entity to be treated as separate for liability purposes, the owner must truly treat the business entity as separate and distinct.

This means that the property used to run the business should be titled in the business name, not the name of the owner. If there is a legal or tax reason to title the property in a name other than the business, there should be a written agreement between the entity using the equipment and the entity that owns the equipment.

Title can also get trickier in the case of business owners who use revocable trusts to dispose of their property in the event of their death. Revocable trusts are designed to avoid the probate process and preserve privacy concerning the property owned by a person upon his death.

Revocable trusts are designed to contain all of an individual's property with the exception of qualified retirement accounts.

For this reason, it is important that all assets owned by a person be titled in the name of his revocable trust. If any property is not titled in the name of the revocable trust the property may not be included in it.

I like to tell clients to think of each separate entity as a separate basket. Everything that the entity needs to perform its business should be in that entity's basket.

That means that it should be titled in the entity's name. Property that is titled includes vehicles, stock certificate and bank accounts. For property that has no title, it should be kept on the premises of the business entity that owns it, separate and apart from property not owned by that business. If property belonging to more than one entity is kept in one place, there should be some written protocol that would allow for easy determination of ownership.

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