Life and Death Planning
for Small Equine Businesses and Private Horse Owners

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Objectives

Unique estate planning needs of horse owners and small equine businesses:

- Highlight estate and succession planning challenges
- Discuss strategies to protect assets, maintain continuity of care and provide stability for living animals
  - Ensure someone shows up to feed the horses
- Equip practitioners with question/issue prompts for individual owner clients and business owner clients
  - How you can add value to the services you provide

Preliminary Notes

Today's discussion is not about:

- Taxable estates
- Nonprofit corporations

We are licensed in Colorado (Margrit) and Virginia (Carina).

Beware of differences in state law that can significantly affect decisions and outcomes in your state.

- Example: in one state, a deed that does not say "joint tenancy" presumes joint tenancy, while in another state, a deed that does not say "joint tenancy" presumes the opposite.

Estate Planning = The Wild West?

It’s an art, not a science.

- Many ways of planning
  - Many methods to reach same or similar results
  - Alternatives are not “wrong” despite strong opinions about best practices
- Practitioners must accommodate:
  - Wide range of client circumstances, needs, goals, resources, risk aversion vs risk tolerance, etc.
  - Different demographics

What is Estate Planning?

Preparation for what to do in the event of your:

- Incapacity
- Death

Regarding:

- Care of self
- Care of dependents (human, animal, business)
- Transfer of assets to beneficiaries

What is Probate?

Court-authorized administration of a decedent's estate

Court *oversight* of administration of a decedent's estate:

- Death with a Will ("testate") = Court verifies Will validity and oversees asset distribution
- Death without a Will ("intestate") = Court applies state's intestacy laws and oversees asset distribution
- Ensures:
  - Debts, taxes, and final expenses paid from decedent's estate
  - Remaining assets distributed to beneficiaries/heirs

When is Probate Required?

- To validate a Will
- When there is no Will
- When assets owned solely in decedent’s name
- When not a “small estate”
- When an estate contains “probate assets” not otherwise transferred via non-probate methods
- When there is a need to determine/ensure the proper distribution of estate assets
- Contested estates

When is Probate Undesirable?

- Difficult court requirements and proceedings cause unreasonable delay in asset distributions
- Complex estate (better to pre-prepare)
- Complex family dynamic (better to pre-prepare)
- Complex assets (horses? business?)
  - Horses and businesses go through probate process
  - Frozen assets = Can’t feed horses
  - Frozen assets = Can’t pay employees
- Privacy concerns (it’s all public record)
- Expensive (generally 3% - 5% of total estate)

How Can We Bypass Probate?

When an estate contains “probate assets” transferred via non-probate methods:

- Inter Vivos (Living) Trusts (revocable or irrevocable)
- Joint ownership with right of survivorship (JTWORS)
- Assignments and designations effective at death:
  - Beneficiary designations
    (e.g., life insurance, retirement plans, annuities)
  - Transfer on Death (TOD) / Pay On Death (POD)
  - Transfer on Death Deed / Beneficiary Deed
    (not available in all states)

How Can We Bypass Probate?

Convert assets into a "non-probate" assets or transfer:

- **Real Property** – put in Trust; JTWROS; TOD/ Beneficiary Deed available in some states
- **Bank Accounts** – put in Trust; JTWROS; TOD/POD
- **Vehicles** – exempt property in some states; TOD available in some states; (do not put in Trust)
- **Tangible Personal Property (horses)** – put in Trust; TOD available in some states; held in business
- **Horse Business** – put in Trust; succession/transfer via Operating Agreement

Considerations When Planning for Equine Assets

Horses are living beings

- Cannot simply stop caring for them at incapacity/death of private horse owner/equine business owner
- Failure to pre-plan the who, what, when, where, why, and how risks real harm

Human bond with horses

- Classified as tangible personal property under the law, but…
  - A desire to plan for care of horses on a level of planning compared to that for minor/dependent children
  - Less like an asset, more like a dependent child

Considerations When Planning for Equine Assets

Resources necessary to provide short and long-term care for horses:

- Knowledge and expertise
- Transportation
- Real property
- Facilities
- Equipment
- Supplies
- Labor
- Financial support
- Etc.

Private Horse Owner Planning

Legal Tools - Incapacity Care Planning:

- General Durable Power of Attorney (Agent may use principal’s funds to care for animals; possibly take possession)
- Absence of pre-planning = Court Conservatorship

Legal Tools – Death Transfer Planning:

- TOD / Joint Tenancy (purely a transfer of ownership)
- Will (transfer of ownership; can also include a cash gift but use cannot be controlled)
- Will with a Testamentary Horse Trust (Probate required to create Testamentary Trust; trust owns, pays for, and directs horse care and disposition)

Private Horse Owner Trust Planning

- Effective upon incapacity and/or death
- Avoids Conservatorship upon incapacity/Probate upon death
- Can create a legally enforceable instruction manual for:
  - Ownership, Care, Disposition
- Can create flexibility in contingency planning (e.g., what to do about a predeceased beneficiary or after-acquired horse)
- Can exert continued control over how the assets are transferred and used in the future and/or direct distributions to multiple generations of beneficiaries
- Can be easier to stay on top of keeping a single trust up-to-date rather than having to update multiple documents or beneficiary designations when plans change (and they do)

Private Horse Owner Trust Planning

However…

Trusts are a more complex planning tool

- Require more upfront thought, effort, and expense
  - But, compared to what?
  - Backend of unplanned estates = a lot of thought, effort, and expense, often with lower quality outcomes
- Longer-running trusts =
  - Greater need for contingency planning
  - Greater trust administration expense

Private Horse Owner Trust Planning – "Horse Trust"

Legal Tool – Incapacity Care AND Death Transfer Planning:

- Created during life ("inter vivos")
- Revocable or irrevocable
- Subtrust or "Standalone" Horse Trust
- **A funded Horse Trust owns, pays for, and directs the horse's care and ultimate disposition**

"Horse Owner's Manual"

- Details horse information and care instructions
- Can be built into a Horse Trust

Private Horse Owner Trust Planning – “Horse Trust”

The longer a horse is to remain under trust ownership, the more important the planning/decisions are regarding:

- Trustee and successors
- Caretaker and successors
- Health and maintenance (vet, farrier, dentist, etc.)
- Board, training, campaign, sale and marketing
- Retirement
- Sufficient funds for regular care and emergency care
  - Paid via human life insurance on owner?

    (Only works if you die)

Private Horse Owner – Sample Scenario

- Will vs. Trust?
- If Will-based planning, what incapacity planning?
- Other options?

What change in factors could change your recommended planning?

Estate Planning for Small Equine Businesses

Why it matters:

- Owner’s sudden incapacity or death can trigger business chaos without a plan
- Business continuity protects both the animals and the business’s operations
- Governance documents can create built-in control and structure
- Trusts can create continuity and succession planning

Estate Planning for Small Equine Businesses

Incapacity Planning:

- General Durable Power of Attorney
  - Power to operate business
- Absence of pre-planning = Court Conservatorship

Death Transfer Planning:

- TOD assignment / Joint Tenancy (purely transfer ownership)
- Will or Will with Testamentary Trust

Incapacity AND Death Transfer Planning:

- Trust created during life
- Business governance documents

Non-Legal Tools?

Estate Planning for Small Equine Businesses

Similarities to traditional business assets:

- Entity structure
- Governance options

Unique assets and challenges

- Business ownership of horses
- Business ownership of facility boarding other peoples' horses

Horses with varying needs:

- High performance / High-value
- Broodmares / Mares with foals in utero
- Stallions / Semen collection and storage
- Medical / behavioral challenges or special needs

Estate Planning for Small Equine Businesses Using Governance Documents

Different practitioner methods for management succession planning:

- Specificity – Provide names of successor manager(s) with method for determining manager incapacity (e.g., the sole business owner who is also manager)
- No specificity – rely on nature and extent of existing estate planning documents and the business owner's Agent or Trustee to make ownership and management decisions (requires Agent or Trustee have power to operate Principal's/Grantor's business)

Estate Planning for Small Equine Businesses Using Governance Documents

Different practitioner methods for ownership transfer:

- Permissive (or restrictive) language in Operating Agreement regarding estate planning transfers (e.g., trust ownership and direction of distributions of interest)
- JTWROS
- Name death beneficiaries in business Operating Agreement (caveat, may not work everywhere)
- TOD transfers / Registration in Beneficiary Form (Uniform TOD Security Registration Act)

Alignment with Estate Plan: Ensure business documents coordinate with the owner's personal estate plan (e.g., trusts or wills), especially if ownership is to pass to a trust rather than directly to heirs.

Estate Planning for Small Equine Businesses Using Operating Agreements

- Restricted/permitted/automatic transfers
  - To spouse, heirs, trusts?
  - Right-of-first-refusal or approval clauses prevent unwanted third parties (like heirs with no business acumen or involvement) from gaining control of the business
- Roles and responsibilities
- Ongoing operations/management
- Restructuring/Sale/Winding up
  - State law/Secretary of State requirements
  - Valuation and sale of business assets (horses?)
  - Distribution of proceeds

Other Small Equine Business Planning Considerations

- Ownership transitions
  - To family – **Do they really want it?**
  - To non-family – **Does the business really have value to sell?**
- By-Laws
- Buy-Sell Agreements
  - Structuring with family members or business partners
  - Fund through life insurance, deferred payments, company funds
- Some funding options (many require advance planning)
  - Annual gift using annual gift exclusion
  - Installment note paid over time (e.g., with wages earned)
  - Life insurance

Estate Planning for Small Equine Businesses Using Business Trusts

Legal Tool – Incapacity Business Continuity Planning AND Death Business Transfer Planning:

- Created during life ("inter vivos")
- Revocable or irrevocable
- Subtrust or "Standalone" Business Trust
  (standalone trust preferred for ease and liability)
- Details business information, management instructions, and plan for succession or winding up

Estate Planning for Small Equine Businesses Using Business Trusts

- Separates private assets from business assets
- Avoids Conservatorship upon incapacity/Probate upon death
  - No court involvement
  - Uninterrupted operations
  - Privacy
- Appoints a separate Trustee from base revocable living trust
  - Ease of transition
  - Ensures appropriately-skilled Trustee
  - Creates centralized and segregated control
  - Streamlines and separates continued operations from other post-incapacity or post-death efforts

Estate Planning for Small Equine Businesses Using Business Trusts

- Legally enforceable instruction manual
  - Ownership Transfer, Management, Continuity, Disposition
  - Details specialized care for specialized assets (horses)
- Flexible contingency planning (e.g., what to do about a predeceased beneficiary or after-acquired assets)
- Continued control over how assets are transferred and used in the future and/or directs distributions to single or multiple generations of beneficiaries
- Asset protection (irrevocable trusts)
- Estate tax planning (irrevocable trusts)

Scenario – Small Equine Business Owner

- How to structure ownership of horses and operations
- Incapacity planning and drafting for owner
- Death transfer planning options through business documents, estate planning documents, etc.
- Death transfer planning in scenario with two children, only one of whom works in the business

What change in factors could change your recommended planning?

Practical Considerations to Aid the Client and Family

How can we help?

- Draft user-friendly documents
  - Plain language
  - Simplifying plans where possible
- Do the client AND their family/employees/fiduciaries understand how it all works?
  - Does everyone involved understand their role?
  - Does everyone involved WANT to play their role?
- Does the plan create the desired/agreed upon outcome?
  - Provide a roadmap

Practical Considerations to Aid the Client and Family

Provide ongoing support as needed/requested

- Difference of opinion in estate planning practice on whether to keep legal representation open or "end" the attorney-client relationship once initial documents are executed
- Can the client manage some or all of this on their own?
  - Some clients having smaller estates do not like the idea of having to hire an attorney for every little thing (even though we know we provide value).
  - Some clients want you to hold their hands and depend on you to be there every step of the way.

Questions?
Thank you!

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