



Stanfield and Dupre, PLLC

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Happy New Year:

I hope you and your family are in good spirits and good health. As we start 2023, it is time for an annual estate and business planning letter that summarizes changes to the law that might affect your planning. We have provided separate sections on Estate Planning and Business Planning below. As always, we are available to answer questions if you have any.

ESTATE PLANNING:

No major changes were passed last year that significantly impacted the estate planning world, despite continued threats to the estate tax exemption limits. Despite, President Biden's consistent promises to raise the limit, it is increasingly unlikely that the limits will change with Republicans controlling of the House of Representatives. As a result, I do not anticipate any significant changes to the limits until after the 2024 election cycle.

With respect to estate taxes, for 2022, the federal estate, gift, and generation-skipping transfer ("GST") tax exemption amounts for 2022 increased to \$12,920,000 for individuals and \$25,840,000 for married couples. These exemption amounts are scheduled to increase with inflation each year until 2025. However, on January 1, 2026, the exemption amounts are scheduled to revert to the 2017 levels, adjusted for inflation. The highest marginal federal estate and gift tax rates will remain at 40% and the GST tax rate will remain a flat 40%.

While exemption amounts are still high, there is still a unique opportunity for estate planning. We recommend that you consider taking advantage of the increased gift tax exemption amount and possibly the GST tax exemption amount by making gifts to children and/or grandchildren either outright or to new or existing trusts. The increased gift tax exemption amount allows a married couple who previously used their full gift tax exemption amounts to transfer additional amounts to their descendants in 2022, without the imposition of federal gift tax.

We also recommend that you review the terms of your Wills and Revocable Trusts at this time to ensure they remain in accordance with your wishes. Many Wills and Revocable Trusts create trusts that will be funded according to formula clauses tied to the exemption amount in effect on your date of death. If you die before 2026, these trusts may be funded with significantly larger amounts than you were anticipating when the documents were signed.

The amount each person may give annually to as many individuals as he or she desires without incurring a gift tax and without using any of the gift tax exemption amount increased in 2023 to \$17,000.

In other words, a married couple may make “annual exclusion gifts” of up to a total of \$34,000 to an unlimited number of recipients. If you would like to make annual exclusion gifts to a minor, you may wish to make these gifts to “Crummey” trusts or to UTMA or college savings accounts. Please note that in addition to making gifts using your gift tax exemption and annual exclusion amounts, there is an unlimited gift tax exclusion for amounts paid on behalf of an individual directly to medical care providers for medical care and to educational institutions for tuition.

You may also wish to leverage gifts of your gift and GST tax exemption amounts by engaging in sales to grantor trusts. Other estate planning techniques, including intra-family loans, grantor retained annuity trusts (“GRATs”) and split-interest charitable trusts, continue to be effective wealth transfer tools as well. It is important to note that certain techniques work better in a low interest-rate environment, so it may be advantageous to act in the near future before interest rates rise further.

Many individual clients have less than \$12 million and most couples have less than \$25 million. Therefore, the majority of our planning is to act as an advisor and discuss family dynamics. For example, I usually ask about your children and want to know if there are any special needs or concerns. This might be a child who has Down’s Syndrome, is on SSI (receiving social security disability income), a child with a tax lien, a child in a bad marriage, a child with a judgment, a child who is an alcoholic, or has other issues. I need to know about their status in order to give you proper advice. If their status has changed since I prepared your documents, then I need to know. I can give advice and sometimes protect their share for their benefit.

If you have not had your plan reviewed or changed in the last 3-5 years or so, you should be aware there are many significant updates which have occurred in the Trust and Will documents. It would be very appropriate for you, and possibly other family members, to visit me and discuss what has changed and what documents might need to be updated.

The following are this year’s observations and comments for your consideration:

1. Many of our clients select a child to be the successor Trustee. Some of our more mature clients will select a child to serve with them as co-Trustee. I have encouraged this decision because it enables a client to turn over as much or as little of the day-to-day management of the Trust assets as they choose. Most of my clients still manage their financial affairs and their child, serving as co-Trustee, is simply added to their accounts for the convenience of both the parent and child. Other clients have been relying on the child to help with paying bills and adding a child on as co-Trustee rather than co-owner on to the account is not only convenient, but a great safety net for the rest of the family.

2. If your children have reached the age of majority (18 in Texas and in most other states), I highly recommend they have powers of attorney executed. For those in college or other higher education, there is often the question of “should they have powers of attorney in the state where they attend college or here in Texas since they come back home?” Best practice in my opinion is to have powers of attorney in both states and so it’s simply a matter of coordinating those documents to ensure they do not conflict.

3. **FUNDING!** If you have a revocable living trust or other lifetime trust as part of your estate plan, please make sure it is properly funded. What does “funded” mean? Funded means that the trust actually owns property in its name. For most revocable trusts, it should own your real estate (i.e you have deeded your property from yourself to the trust), NON-retirements accounts are in the name of the trust, business interests (LLCs, LPs, Inc. etc.) are owned by the trust and beneficiary designated assets have the trust as a listed beneficiary (either primary or secondary depending on your family structure). The biggest issue we see with trusts is funding. Even if you properly funded the trust initially, did you acquire any new

assets that need to be owned or directed to the trust? Run through your balance sheet and ensure everything is owned by the appropriate person or entity and if you have questions, whether we drafted the plan or not, just ask!

4. Include or update your “I Love You” letter with your estate plan. An I Love You letter is simply a letter to your executors and beneficiaries that includes a list of all your assets and where to find them, a list of all your advisors and how to contact them and if you have a trust as part of your estate plan, any specific instructions on how you’d like the trustee to manage those assets. If you need a form or sample I Love You letter, we are happy to provide one. The number one issue executors and trustees run into is “Where is the stuff? What did mom and dad own?” Recall the purposes of estate planning is to make transition during death or incapacity easier, so make it easier!

5. Designate personal property. Remember that your Will or Living Trust takes care of the big stuff—real estate, bank accounts, business interests etc., but what about all your personal property (guns, jewelry, furniture)? You should have received a Personal Property Memorandum with your estate plan if we drafted it, but when was the last time you updated it? Many contests are borne out of “the small stuff.” “Mom always wanted me to have her rings” or “Dad said I could have the guns.” It is impossible to list every item of personal property and I do not recommend that, but if there are family heirlooms we know are important or may become an issue, settle it now by writing it down or some client simply start giving it away now. In either case, just have a written plan so your beneficiaries are not guessing.

6. Sit down with your family and ensure they know generally how your estate is divided. In some instances, this may cause more strife so use your judgment here. You know your family better than we do, but generally, the more a beneficiary or fiduciary (executor, trustee, power of attorney) knows about what they are stepping into, the better. For example, are you children aware they will receive property in a trust? Do they know what a trust is and how it functions? Do they understand the benefits of leaving property in a trust? Even in a solid family structure, beneficiaries rarely know as much as you think they do and often make lots of assumptions.

7. Review and save any and all digital assets. Your login/usernames, passwords, social media accounts and personal identification numbers are important to ensure family members can access important online and electronic records after your death. Cryptocurrency has become more popular and much like digital assets, require very specific instructions and passwords for your beneficiaries to access.

8. If you still have an A/B Trust (Family/Marital Trust) type planning, it is imperative you make an appointment with my office. Over the past several years, I have written about whether or not an A/B Trust is still appropriate for some clients.

9. Please review all life insurance, IRA, and annuity beneficiaries to ensure the appropriate person or Trust has been named as beneficiary. Generally, most life insurance, annuity and IRA beneficiaries should first be your spouse.

10. Examine asset protection. Are any of your assets exposed to creditors? Can we fill those gaps with insurance or perhaps additional planning via a trust or LLC? Likewise, please ensure any current structures are being administered correctly – don’t mix personal assets in your LLC and vice versa. We are happy to help advise in any of these areas.

11. Sit down with your professional team, i.e. your CPA, financial advisor, insurance broker and commercial banker. If you need a referral for any of these areas, please let me know. Planning in these

areas should happen throughout the year. Many clients wait until December to start asking financial, tax and insurance questions. Start now!

BUSINESS PLANNING

On to business! It is sometimes hard to summarize or give a seminar on the “business planning” or advice that an attorney gives to clients throughout the year. I thought it helpful to provide a copy of our business planning letter that we send to clients each year and speak on a few select topics and questions that we hear a lot.

Whether 2022 was a good year or a bad year on the business side, you made it to 2023. We, at Stanfield & Dupre are glad we could be a part of your growth and/or continued success as a business owner. Consider this your annual legal checkup letter where we discuss and highlight common areas that small business owners either overlook and/or that we just recommend you look at each other on the legal side and finally how we see our role as business attorney.

1. Having the Right Business Structure

Selecting the right entity type (LLC, LP, Inc., LLP etc.) is crucial from an asset protection standpoint. LLCs and LPs provide the best asset protection in Texas and LLCs are by and large the preferred entity for most operating businesses. An LP or LLC is beneficial for estate planning purposes. For most clients, we do NOT recommend owning or operating as an Inc. unless they are doing business overseas or are going public in the near future. Corporate stock (unlike ownership interest in an LP or LLC) is not as well protected in Texas, i.e. it is subject to seizure by a creditor. It is simple to correct that problem, but often delayed or overlooked due to the perceived hassle of conversion. Please let us know if you have any questions on your structure or just need a refresher on how you are set up.

2. Not Having Terms And Conditions Policies To Which Customers Agree To Be Bound

When you access company websites, especially those that provide services of some sort, you will generally see a “Terms and Conditions” agreement. In this agreement, are all of the specifics for use of your products or services and customer obligations in that use. If you do not have this policy in writing and published and a “check box” for a customer to select before a purchase, then you have left yourself wide open to a inclusion in a lawsuit if that customer becomes a defendant. If you do not have an interactive website that would require or necessitate online terms and conditions, such should be listed in your standard contracts or on the back of a purchase order at the very last. We review and update terms and conditions on a weekly if not daily basis. Make sure your forms are up to date!

3. Failure to Have a Privacy Policy

Any business that markets its products online must have a privacy policy that explains what customer information it does and does not share. For example, if you share your customer list and emails with another company, your customers have the legal right to know. Further, that privacy policy must be publicly disseminated. Just like your terms and conditions, make sure your privacy policy is up to date.

4. Failure to Follow Business Tax Laws

Is your business subject to sales or franchise? When must you file your business income tax returns? Do you need to make quarterly payments? Tax law is complicated no matter where our business is located. Make sure you have a good accountant or great software that keeps your records and timely files your taxes.

5. Inappropriate/Incomplete Contracts with Outside Vendors

When you use the services or purchase raw materials from someone outside of our business, you need iron-clad contracts. When you are either an owner or a tenant of your premises, you need legal documents that establish the “rules” for occupancy. Never enter into an agreement with an “outsider” without a legally-binding agreement. A good attorney can draft those contract templates for you – don’t rely on free Internet sites.

6. Failure to Get the Proper Documentation on Employees

Federal laws require that you have copies of certain documents on file for every employee. It is easy to overlook or just get behind on documentation especially during the day-to-day hustle and bustle of running a business. Have your accountant or attorney review those records on a quarterly/annual basis and get a good, consistent system in place for hiring and firing.

7. Failure to Get Nondisclosure and Non-Compete Agreements

You have proprietary information that belongs to your company – customer lists or special “formulas,” for example. Anyone who works for you and who has access to this valuable information must be legally bound by these agreements. Take Kentucky Fried Chicken as an example. The recipe is a highly guarded secret. Anyone with access to this recipe must sign a non-disclosure agreement which legally binds them never to reveal that recipe. The same goes for customer/client lists or setting up a competing business. Insurance companies, for example, usually make their employed agents sign a non-compete which prevents them from leaving and stealing clients.

8. Not Getting Copyrights, Patents, and Trademarks

You will have no leg to stand on if another party “steals” you name, copies your product or intellectual property verbatim, unless you have protected these things. There is a difference in laws regarding physical products, code, and ideas, and you need to know which protection to use for each thing. Technology companies are particularly vulnerable today. Know the law and protect your stuff.” - Jeremy Litster, CEO of Litster Frost.

With the above in mind, this next section, while a little self-serving, addresses a question we often hear in the world of LegalZoom and online contracts - how exactly can a business lawyer help my business and/or when should I call my attorney?

A lawyer can help set up your corporate structure, protect your intellectual property, deal with real estate, insurance, and tax issues, defend you in the event of lawsuits or other liability, and even provide exit strategy and estate planning advice.

Many businesses often turn to a lawyer only when it's too late. The best time to find a lawyer is before you need a lawyer; not only will the attorney be familiar with your business, but he or she may be able to help you avoid problems before they occur. If you run a small business and don't feel consulting with a lawyer is

necessary, keep in mind the fees you are charged for services that help you avoid legal problems will be far lower than the fees you are charged then you are faced with a legal problem. When should you consider seeking legal advice? There are just a few situations where getting the help of an attorney can make sense:

(a) **Establishing a legal business entity**

Online or do-it-yourself incorporation saves money, but the process is sometimes more complicated than it may first appear. An attorney can not only help you file the appropriate documents, but he or she can also help you determine which type of corporate structure is best for your needs and type of business. Also, choice of entity discussion could be the most important decision you make around formation.

(b) **Corporate Governance**

While most corporations will use an attorney to help with the process of incorporation, new businesses sometimes neglect the on-going legal requirements to maintain their corporation status. Annual shareholder, director and partner meetings need to be held, and recording of minutes and election of officers must conform with state requirements. Failure to do so could jeopardize corporate status and result in "piercing of the corporate veil" in the event of a lawsuit or other legal action, exposing corporate officers to personal liability or other legal problems.

(c) **Insurance Advice**

Premises liability, professional liability, error & omissions; all worthy of a conversation with an attorney to ensure your enterprise is protected in the event of an accident or mistake.

(d) **Intellectual Property**

Many intangible assets of a business should be legally protected. A company's name, logo, brand name may be entitled to trademark protection. Proprietary computer software, semiconductor chip mask designs, vessel hull design and many other creations may be eligible for patent registration. Patents are often thought to cover only machines and other manufactured products, but can also protect processes, such as a method for refining petroleum, or new compositions of matter, such as chemical compounds or mixtures. Trademark, copyright, and patent registrations can help a business protect the things that give it a competitive advantage in the marketplace

(e) **Hiring employees**

Employee lawsuits and disputes most commonly occur because an employer did not properly define the employment relationship. Problems are not limited to issues like pay policies, overtime policies, and benefits programs. Many businesses fail to protect intellectual property and customer relationships. Solid non-disclosure agreements and confidentiality agreements can protect you from losing control over intellectual property and from watching your ex-employees become your direct competitors.

(f) **Firing employees**

Hopefully you will never be forced to fire an employee, but if you are, ensuring that you do so in a legal and defensible manner can help you avoid litigation.

(g) **Creating and signing contracts**

Agreements, leases, and other contract are binding once signed; the contracts you sign should not commit you to one-sided terms that place you at a disadvantage. And the contracts you create should protect your company

and serve in its best interests.

(h) Resolving disputes

An attorney can help resolve external disputes, like with vendors, suppliers, or customers. An attorney can also help resolve internal disputes between partners, shareholders, and even employees.

(i) Purchasing other companies

Buying another business can create a number of business, legal, and tax considerations. An attorney can structure the agreement properly, negotiate terms, and help look for potential risks and liabilities created by the purchase. And, depending on the nature of the industry and the business, an attorney can help you understand and meet regulatory guidelines.

(j) Bringing in and removing partners or shareholders

When a company issues stock, notes, and other corporate securities, the process is governed by state and federal laws. Violating those laws could create liability for company owners and executives. Partnership agreements should specifically detail the rights and responsibilities of all parties to avoid misunderstandings.

(k) Succession planning

Small companies rely heavily on every employee, especially the founders and key executives. A succession plan can not only help the company survive the loss of a key employee, but also deal with the potential financial ramifications. A good succession plan identifies contingencies and establishes a plan for dealing with those situations. "What happens if someone leaves the company?" is a question that should be answered ahead of time.

(l) Selling the business

Selling a sole proprietorship can be relatively simple. Selling a corporation can create a number of tax and legal obstacles that must be overcome. In addition, the manner in which you sell the company (transferring stock, deferring payments, etc.) can dramatically affect your tax burden. A good attorney can guide you through the process of selling a business – and ensuring the sale is on terms that are as favorable as possible.

You will definitely need an attorney if:

- You face a serious legal problem. Examples include a customer who is injured by one of your products, a vendor who violates a contract, or if your business fails to comply with state regulatory requirements.
 - Employees sue or threaten to sue. If an employee sues for discrimination, wrongful termination, sexual harassment, or another issue, immediately seek the help of an attorney. Not only is your company liable, but in some cases you or your employees can be held personally liable as well.
 - You face an environmental or other regulatory issue. Violations of environmental protection laws carry heavy penalties; plus, you may be liable for cleaning up any hazards or violations. Certain areas are heavily regulated; e.g., healthcare, FDA, if you are in the healthcare device space.
 - You are concerned about an issue ... but are not sure. The worst time to look for a lawyer is when it's too late; if you're unsure about an issue, about potential liability, or about whether you are in
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compliance with regulations or laws, ask an attorney for guidance. Legal advice is often like insurance: you pay a little up front in order to avoid major expenses later.

FIRM ANNOUNCEMENT

One goal for Stanfield & Dupre for the 2022 year was to have a certified mediator in house and as of December 15, 2022, Senior Partner, Brent Stanfield made that goal a reality. He is now a certified mediator and starting in 2023 we are now able to offer that service. We will have a short brochure on rates, what it means to be a mediator and, for those unfamiliar with it, the advantages of mediation.

CONCLUSION

We wish you the best 2023! Our purpose in sending this yearly letter is to get you thinking about your assets, your estate, and your decisions. If you need any clarification or have any questions, please feel free to call my office.

Regards,

A handwritten signature in cursive script, appearing to read "Nick Dupre".

Nicholas A. Dupre
