



# William E. Hesch, Esq., CPA, PFS

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- 3) Failure to execute Financial Power of Attorney and Health Care Documents so your family can manage your finances and make your health care decisions if you are disabled or incapacitated.  
Action Step:

YES	NO	N/A

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- 4) Failure to make sure your spouse and children are financially secure with adequate disability and life insurance if you become disabled or die.  
Action Step:

YES	NO	N/A

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- 5) Failure to organize your estate documents and important paperwork so that your family can take care of your affairs if you become disabled or die.

YES	NO	N/A

Action Step:

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- 6) Failure to make sure your heirs receive their inheritance over a period of time and not all at once since most lottery winners go bankrupt within a few years after getting their financial windfall.

YES	NO	N/A

Action Step:

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- |                                                                                                                                                                   | YES | NO | N/A |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----|
| 7) Failure to control estate plan upon death of surviving spouse so that your children and family get the same inheritance regardless of which spouse dies first. |     |    |     |
- Action Step:

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- |                                                                                                                                                                                              | YES | NO | N/A |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----|
| 8) Failure to use a trust and survivorship or beneficiary designation to avoid probate upon death of surviving spouse to save cost of probate as well as keep estate plan for heirs private. |     |    |     |
- Action Step:

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- 9) Failure to use a trust to control the voting stock of a family business by using the Trustee to execute your succession plan and protect the business from legal problems if heirs get divorced.  
Action Step:

YES	NO	N/A

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YES NO N/A

- 10) Failure to set up a Buy Sell Agreement as part of your succession plan to limit the marketability of the stock ownership being inherited by family members and to control how buy out price is determined upon death, disability, termination of employment or other triggering events.  
Action Step:

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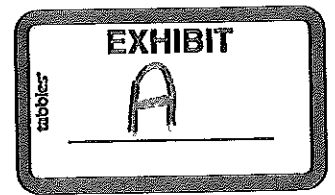
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## Session 3

# Estate Planning for Small Business Owners

## Business Owner Estate Plan Checklist

William E. Hesch, Esq., CPA, PFS  
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1.

Does your business have a succession plan in place? Have you put together a succession plan and do key persons know what to do upon your death/disability?

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2.

Do you have a Buy/Sell Agreement in place to transition upon the death or disability of yourself or another business owner/partner? Does your estate plan distribute your estate assets among your heirs in an equitable manner according to your wishes?

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3.

Do you have the right people in place to manage your business in the event of the disability of an owner or key employee? Does your POA specifically allow POA to handle all aspects of running your business? Is POA the right person to run your business? Do you want your POA to be able to fire/replace President/Manager of company?

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4.

Does your business have the legal structure in place to allow for a continuity of operations in the event of the death or disability of an owner or key employee?

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5. Are you Concerned with asset protection? Do you have asset protection plans in place to protect your personal assets from creditors or lawsuits?

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6. Do you need key man insurance - Death or Disability?

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7. Are there bank loan personal guarantees and will the personal guarantees continue if you die? Is it possible to get personal guarantees discharged at death?

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8. Should the business work with bank to have loan arranged so that it continues and is not called in the event of the owner's death or disability?

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9. What is value of your business? Is that value subject to a risk that value will decline upon owners death or disability? What steps should be taken now to protect your business value?

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10. Bottom Line - Plan for the Worst and Expect the Best!!

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**Business Owners May Need a Trust and and Owner Operating Agreement that is Binding on Heirs in Estate Plan**

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1. Trustee and Successor Trustees control business by having Trust own the company upon death of Business Owner. Real estate used in business may also be owned by Trust. Profits received by Trust are allocated and paid to family members pursuant to Trust provisions. Family members working in business are paid fair compensation, including bonuses.

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2. If do not want Trust to own your business interests upon your death, then family members can receive ownership interests and personally own an interest in Company.

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- a. Voting units may be given to family members active in business who would then control management of Company. Non-Voting units would be used to allow Owner to equalize wonership of Company equally among all family members.

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b. An alternative - Owner could have family members have equal voice in controlling management of Company and coalition of a majority of ownership would make those decisions. However, Management of Company by Committee has the potential to create havoc within Company.

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c. If you have an LLC or Corporation, Owner may use Owner Operating Agreement to determine whether 51% or 2/3 vote are required to make major decisions. State Law may dictate 2/3 vote or more to make major decisions if you do not have an Owner Operating Agreement to provide otherwise.

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Owner can set up Operating Agreement that controls what happens upon death or disability of Owner. Upon mutual agreement, the family members can amend Owner Operating Agreement.

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d. Common Problem - Business and related real estate owned by Owner make up most of estate assets. Family members active in business may need to either own company with siblings who are not active in business or buy out their interests in the Company. Valuation of that buy-out can be contentious unless Business Owner uses Owner Operating Agreement that is binding upon his heirs. The buy-out price may be set either by formula, a dollar amount that is adjusted annually, or by an appraisal process.

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# Estate Planning Self-Assessment Guide

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There are three main goals you should have in mind as you assess your current estate plan.

1. Determine who will get what assets and when they should receive them
2. Ensure your spouse and children are financially secure
3. Avoid administrative hassles for your heirs by organizing the necessary documents / paperwork

This guide is designed to help you identify potential issues you still need to address in your estate plan. The more "No" answers you have, the more likely it is that you might need to review your plan (except for the "Trust Considerations" Section on the following pages. The more "Yes" answers you have, the more likely it is that you might need a trust).

## Questions for Individuals

1. Have you reviewed your estate plan and documents with your attorney and CPA within the last three years?

Yes

No

N/A

2. Do you and your spouse currently have:

- |                                                        |     |    |     |
|--------------------------------------------------------|-----|----|-----|
| a. Wills?                                              | Yes | No | N/A |
| b. Trusts?                                             | Yes | No | N/A |
| c. Powers of Attorney?                                 | Yes | No | N/A |
| d. (KY residents) Living Will / Health Care Surrogate? | Yes | No | N/A |
| e. (OH residents) Health Care Powers of Attorney?      | Yes | No | N/A |
| f. (OH residents) Living Will Declarations?            | Yes | No | N/A |

3. If you have a blended family, has your estate plan properly provided for:

a. your spouse and your or your spouse's children from previous and current relationships?

Yes	No	N/A
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b. What happens if no descendants are living at the time of the surviving spouse's death?

Yes	No	N/A
-----	----	-----

4. Will your loved ones be financially secure in the event of:

a. your death?

Yes	No	N/A
-----	----	-----

b. the death of your spouse?

Yes	No	N/A
-----	----	-----

c. the deaths of both you and your spouse?

Yes	No	N/A
-----	----	-----

5. Will your loved ones be financially secure in the event of:

a. your disability?

Yes	No	N/A
-----	----	-----

b. the disability of your spouse?

Yes	No	N/A
-----	----	-----

c. the disabilities of both you and your spouse?

Yes	No	N/A
-----	----	-----

6. If you have a child with special needs, is your estate plan structured to allow the child to receive applicable government benefits in lieu of using trust assets for basic support?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
7. Have you completed Medicaid-related planning with your elderly parents? Or, for yourself, if applicable?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
8. Does your estate plan have the right persons designated as:
- a. Executors under the Will?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
- b. Guardians for minor children?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
- c. Trustees of Living Trust and/or Life Insurance Trust?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
- d. Power of Attorney for financial affairs?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
- e. Persons to make health care decisions on your behalf?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
- f. ALTERNATES for all of the above?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
9. In the event both parents die, do you want the Guardian and Trustee in your estate plan to be the same person and to provide for your children?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
10. Do you want to have any special requirements for the Guardian and/or Trustee to request that certain persons have visitation rights?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|
11. Have you discussed with your spouse and person(s) appointed under your documents what you want them to do and where your important paperwork is located?
- |     |    |     |
|-----|----|-----|
| Yes | No | N/A |
|-----|----|-----|

12. Are your Power of Attorney and Health Care documents up-to-date with HIPPA (2003 law) provisions so your loved ones don't have any delays in consenting to treatment on your behalf and/or in obtaining necessary medical information from your doctors?  
Yes No N/A
13. Have you made funeral plans so your loved ones don't have to in their period of grief?  
Yes No N/A
14. Do you have a Master Document Locator in place so loved ones can locate important documents?  
Yes No N/A
15. Do you want to specifically provide for bequests to charities?  
Yes No N/A
16. Have you legally designated someone to take care of your pets upon your death, bequested money to a caretaker, and/or set-up a "Pet-Trust"?  
Yes No N/A

### Trust Considerations

1. Which of these benefits are important to you?
- a. Protect your heirs from quickly depleting their inheritance.  
Yes No N/A
- b. Keep your estate assets in your blood line and not to your heir's in-laws.  
Yes No N/A
- c. Prevent your heirs from investing their inheritance in worthless investments.  
Yes No N/A
- d. Ensure that assets and IRA/pension plans are used to provide for the surviving spouse for life.  
Yes No N/A
- e. Control how assets are allocated among children and step-children upon death of surviving spouse.  
Yes No N/A

f. Maximize federal estate tax savings.

Yes No N/A

g. Control/hold assets in trust and limit distributions if heirs have alcohol/drug issues.

Yes No N/A

h. Create asset protection for heirs from their creditors.

Yes No N/A

i. Avoid probate delays and costs for your loved ones.

Yes No N/A

j. Keep your estate private from the public.

Yes No N/A

### **Most Importantly.....**

1. Are your assets titled and beneficiaries properly designated to ensure your estate plan functions the way you intended?

Yes No N/A

### **Questions for Business Owners**

1. Does your business have a succession plan in place?

Yes No N/A

2. Do you have a Buy/Sell Agreement in place to transition upon the death or disability of yourself or another business owner/partner?

Yes No N/A

3. Do you have the right people in place to manage your business in the event of the disability of an owner or key employee?

Yes No N/A

4. Does your business have the legal structure in place to allow for a continuity of operations in the event of the death or disability of an owner or key employee?

Yes No N/A

5. Do you have asset protection plans in place to protect your personal assets from creditors or lawsuits?
- Yes                      No                      N/A

If you would like to discuss how these issues affect you in more detail, please contact me directly at (513) 509-7829. I'll be glad to review your estate plan and get it to where you need it to be! Be sure to also visit us on the web at [www.heschlaw.com](http://www.heschlaw.com).