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Tales from the Docket – Business Halts Because Structure Failed to Address Succession Planning

BY REBECCA MACGREGOR • JANUARY 5, 2022

A client owned a very successful business, headquartered in Massachusetts with a flagship store in another New England state. The business structure was designed by corporate counsel to maximize creditor protection. It had one limited liability company owning each of the real estate properties. Each LLC leased the real estate to a separate corporation, which managed the daily business operations. There was a parent company that owned all of the various LLCs and corporations. Although the design provided creditor protection, it did not take into account [succession planning](#).

When the owner suddenly died, the entire business operation came to a screeching halt because the owner had failed to name a successor manager for the LLCs and successor officers for the corporations. To make matters worse, the underlying owner of all of the entities was the decedent in his individual name, which meant that until a Personal Representative was appointed by the probate court, no one had legal authority to appoint successor managers and officers. With no one at the helm, the businesses could not purchase inventory, deposit sales, or even make payroll.

Everything stopped while we raced to the probate court and petitioned to have a Personal Representative appointed for the Estate. All of this could have been avoided by naming successor managers and officers, and by having the decedent's revocable trust as the owner of his businesses, rather than held in his individual name.

If you own a business, to avoid this result, it is essential to coordinate your business structure with your estate plan.

For more information, please contact the alert author or your Bowditch attorney at 508-791-3511.

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