New Business Succession Strategy: The Purpose Trust

The beginning of a new year is when many of us reflect on where we have been and what we would like to accomplish in the future. If you are a business owner, you may be tempted to succumb to the tyranny of the urgent and fail to take the time to consider the future of your business. However, it is important to think about what you would like your life's work to accomplish in the future. If you would like to help make the world a better place for future generations, you should consider a relatively new and perhaps unfamiliar planning tool: the purpose trust.

What Is a Purpose Trust?

A typical trust is an agreement involving several parties: the grantor, the trustee, and the beneficiary. After the trust is created, the grantor funds it with money or property, and the trustee is responsible for managing the money and property as specified in the trust for the benefit of specific named beneficiaries. One exception recognized under the law is a charitable trust that is created for a charitable purpose but has no specific beneficiaries. In recent years, however, some states have enacted statutes that allow the establishment of noncharitable purpose trusts (generally known as purpose trusts). In some states, they can be established only to care for pets or maintain a grave site. However, other states (for example, Delaware, New Hampshire, South Dakota, Utah, and Wyoming) allow purpose trusts for most lawful purposes, as long as they are reasonable, attainable, and do not violate public policy. Because there are no beneficiaries to ensure that the trustee is carrying out the purpose of the trust, the grantor must designate an independent trust "enforcer" who can petition the court if the trustee fails to perform its duties under the trust. The same or a different party could also be appointed as a trust protector who can modify the trust if necessary, for example, to add beneficiaries if the purpose of the trust has ended, change the situs of the trust, or even terminate it. The goal of a purpose trust is different from that of more common estate planning tools in that it is not aimed primarily at minimizing taxes or transferring wealth efficiently (although it may achieve those goals) but instead at ensuring that the grantor's stated purpose is carried out.

The Patagonia Purpose Trust

In September 2022, Yvon Chouinard, the founder of Patagonia, a $3 billion clothing company, transferred the voting stock of the company to a purpose trust designed to further his lifelong goal of fighting the environmental crisis. In a message from Chouinard on Patagonia's website, he explained that his desire was for the company to continue to pursue its stated purpose: "We're in business to save our home planet."[1] After learning that his children were not interested in running the business, he considered his options. Although he could have sold the company and donated the proceeds to other organizations that would continue to pursue the company's goals, he worried that a new owner of Patagonia would have different values and that his employees would not have job security. The voting stock of the company was transferred to the

[1] Yvon Chouinard, *Earth Is Now Our Only Shareholder*, Patagonia, https://www.patagonia.com/ownership/ (last visited Dec. 22, 2022).

Patagonia Purpose Trust, which, guided by the family and their advisors, will ensure that the company's values are pursued and that its profits further their goals. All of the nonvoting stock was contributed to a 501(c)(4) nonprofit organization that will be funded by Patagonia's dividends, worth an estimated $100 million a year,[2] which it will use in its efforts to protect the environment. Because the business interests were not donated to a charity, the gift will be subject to an estimated $17.5 million in gift tax, and no charitable deduction will be available to Chouinard. However, he will avoid $700 million in capital gains taxes, and when he dies, Chouinard's estate will avoid substantial estate tax liability.[3]

Why Would You Want to Transfer Your Business to a Purpose Trust?

If you own a profitable company, there are a number of reasons why you may be interested in a purpose trust as you consider business succession planning. Like the Chouinard family, you can ensure that in addition to providing job security for your employees, the values underlying your business continue to be pursued for many decades into the future. Especially if you do not have children who are interested in running the business, or if your children do not share your values, the terms of a purpose trust can require future management to adhere to the purpose of the trust. Transferring the business to a purpose trust will also ensure that it remains a private company and that the pursuit of profits will never replace your cherished values as its main goal.

What are your goals for the future of your business? If you have a desire to use the wealth you have acquired for the benefit of others, you may be interested in learning more about a purpose trust. Give us a call if we can help you determine if you would like to explore this planning opportunity.

---

[2] David Gelles, *Billionaire No More: Patagonia Founder Gives Away the Company*, N.Y. Times (Sept. 14, 2022), https://www.nytimes.com/2022/09/14/climate/patagonia-climate-philanthropy-chouinard.html.

[3] *Patagonia Billionaire Ducks $700 Million Tax Hit by Giving It Up*, Bloomberg Law (Sept. 16, 2022), https://news.bloombergtax.com/daily-tax-report/patagonia-billionaire-ducks-700-million-tax-hit-by-giving-it-up.