



A Not-So-Happy Accident: Bob Ross's Estate Planning Failures Leave His Son With Next to Nothing—Part 2

As the host of the wildly popular *The Joy of Painting* TV series on PBS, Bob Ross became a pop-culture icon, who was equally famous for his giant head of hair, soothing baritone voice, and folksy demeanor as he was for his iconic landscape paintings. And like so many other artists, Bob's artwork and image would become even more popular following Bob's death in 1995.

Bob's philosophy in both painting and life was that there "were no mistakes in life... just happy little accidents." Sadly, as detailed in the recent Netflix documentary *Bob Ross: Happy Accidents, Betrayal & Greed*, Bob's failure to coordinate his business agreements with his estate plan was anything but happy, leaving his only son largely unable to benefit from his father's fame and fortune.

Bob's planning failures led to an ugly court battle between his former business partners and his family, who were fighting for control of the lucrative intellectual property rights to the Bob Ross brand. And while Bob's son Steve ultimately lost his fight to benefit from the business empire built on his father's persona and painting skills, here in part two, we'll explain the steps you can take to ensure that your loved ones don't suffer the same fate and are able to fully benefit from all of your business assets following your death.

Ensure Your Business Agreements Are In Accord With Your Estate Plan

As we learned last week, although Bob intended to leave all of his intellectual property rights to his son, Steve, and half-brother, Jimmie Cox, and he even changed his estate plan to transfer those rights to them, the court ruled that Bob couldn't transfer those rights because Bob didn't own those rights to begin with. The court ruled that Bob had transferred all rights to his intellectual property to Bob Ros Inc. (BRI) during his lifetime via oral contracts, and therefore it didn't matter what his estate plan said, because those rights weren't Bob's to give away.

Bob started BRI in 1985, with his wife Jane Ross, along with husband and wife Walter and Annette Kowalski. The four were initially equal partners in the corporation, but following Jane's death in 1992, the bylaws of BRI required that Jane's share in the company be divided equally among the surviving three partners. As a result, Bob was reduced to owning just one-third of the company that bore his name and likeness, and this was the structure in place upon Bob's death in 1995.

Bob's situation is fairly common among business owners. When business owners first create their governing documents—operating agreements, bylaws, partnership agreements, etc.—they often aren't thinking ahead about what would happen to their business and its assets

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when they die or if they become incapacitated. And because of this, they don't take the proper precautions to ensure that their business assets are properly protected by their estate plan should something happen to them.

In other cases—and as we saw with Bob—business owners falsely assume that their estate plan will override any business agreements they are party to, and therefore any assets they pass to their loved ones via their will or trust will transfer to their intended beneficiaries regardless of what's in their business agreements. However, this is false, and in fact, the very opposite is true. Whether it's a partnership, LLC, corporation, or some other business structure, your estate plan does not have the power to modify, undo, or override any business agreements to which you are a party.

The bottom line: When it comes to the ownership of business assets, the legal agreements governing the ownership rights of a business are what determines who owns the business and its assets upon the death of an owner, regardless of what your estate plan says. This is why it's essential that you make certain that any business agreements you enter into are in coordination with your estate plan. We can help you do this as long as we know about all of your business holdings, including your intellectual property and business entities when we handle your estate planning with you.

As we saw with Bob's case, failing to properly coordinate your business agreements with your estate plan can lead to disastrous consequences. Fortunately, as your Personal Family Lawyer®, we can ensure that your business agreements are fully coordinated and integrated with your estate plan, so all of your business assets, including any intellectual property you own, will pass seamlessly to your loved ones in the event of your death or incapacity.

Whether your business is just getting started or you've been in business for years, here are the steps you need to take to avoid making the same not-so-happy mistakes that affected Bob Ross and his family.

The Right Way To Plan

The ideal time to coordinate your business agreements with your estate plan is when you first launch your business. This way you can address the ownership rights to all of your business assets, including any intellectual property, from the very start and incorporate those ownership rights into your company's governing documents.

If your business has multiple owners, you'll want to enter into the process of making agreements with your partners, and not just rely on form documents, or sign documents you have not fully understood. All too often, business agreements are created via form or template

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documents that do not give any real consideration to your most valuable assets. If that's the case for you, now is not too late to make a change—but tomorrow might be.

Make certain that the governing documents address the ownership rights to all of the company's assets, including any intellectual property, intentionally. And be sure to consider what happens to the company, and its assets, upon a sale, death, or disability of each owner of the company.

To ensure your intellectual property (and all of the assets of your business) are properly considered in your governing documents, you should consult with a trusted attorney like me, your Personal Family Lawyer®, who has experience in both intellectual property and estate planning (or can bring in the proper intellectual property advisors), to ensure that everything is documented and in alignment with your wishes, and your most valuable assets are properly handled.

If you are like Bob and many other business owners and you failed to coordinate your company's governing documents with your estate plan at the start of your business, you'll need to hire a lawyer like us to review your company's existing governing documents to determine how the documents address the ownership and succession of the company's assets. And if you haven't created your company's governing documents yet, now is the time to put these essential legal agreements in place.

When reviewing your governing documents, you'll want to ensure that they properly address the ownership rights to your company's intellectual property and other assets upon an owner's death or incapacity, as well as upon the sale or dissolution of the business. If upon reviewing the governing documents, you find that the ownership rights are not in alignment with your estate planning goals, it may be possible to renegotiate the agreement with the other owners and amend the documents to better fit with your aims.

If renegotiating the ownership rights proves infeasible, at least your Personal Family Lawyer® will be aware of this fact, and we may be able to come up with an alternative solution to transfer ownership of these assets to your heirs. It's certainly not the ideal situation, but it's far better to learn this now while you are still alive, rather than learning it after your death as happened with Bob's son Steve.

Succession Planning

Once you've ensured the proper distribution of your intellectual property and other business assets through your company's governing documents, you must then use your estate plan to

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protect and pass on the ownership rights to your share of the business interests you own. This often takes place through a coordinated business succession planning process.

Unfortunately, far too few business owners take the time to prepare for their company's continued success following their retirement, death, or incapacity. Yet, creating a comprehensive succession plan as part of your overall estate plan is just as crucial as any other planning you do for your business, if not more so.

As we saw with Bob Ross, not planning for the future of your business after you are no longer in the picture can have terrible consequences for your family if (and when) something should happen to you. Whether you exit your business with a sale, your retirement, your incapacity, or as a result of your death, there will come a point when it's time for you to exit your business. And a succession plan is designed to ensure that your company will continue to prosper once you are no longer running the show.

A Road Map For The Future Of Your Business

That said, when it comes to estate and succession planning, it can be difficult to even identify clear goals for a future that doesn't involve you. This is just natural. If planning were simply another operations issue that needed solving, you'd have a plan in place in no time flat. However, multi-generational planning is by default something you're almost certainly unfamiliar with.

In fact, business strategies that worked for your grandfather and father might not have worked for you. And by the same token, what worked for you may not work for coming generations. This can make it feel impossible to even know where to begin with your plan, much less identify what problems might arise and how to address them. But start you must.

This is where experienced estate planning lawyers like us come in. We can guide and support you to create a comprehensive estate plan to ensure the company and wealth you've worked so hard to build will last for generations to come. In particular, this includes putting in place a long-term business succession plan that not only names your successor but also provides a detailed roadmap for him or her to follow when you're no longer around to offer your wisdom and advice.

If you've yet to create an estate plan that includes a comprehensive succession plan for your business's future, meet with your Personal Family Lawyer® right away to take care of this vital responsibility. And even if you already have a plan in place, you should have us review it to make certain you've covered all your bases, as this is one of the areas we see most often overlooked in estate planning. Taking these actions will not only help shield your company and

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family from unforeseen tragedy but also give you the peace of mind needed to take your business to the next level.

Leveraging Your Intellectual Property For Future Generations

After you've decided how you want your business to be run in your absence and formally spelled this out in your succession plan, you may want to consider separating your operating activities and your intellectual property into separate entities. In that case, you'll want to consider which estate planning vehicles are best suited for protecting and transferring the ownership of your intellectual property rights to your heirs. In most cases, the best planning vehicle for this purpose is going to be a trust, either a revocable living trust, an irrevocable trust, or a combination of the two.

Using a trust, you can spell out exactly how you'd like your intellectual property distributed to your beneficiaries. In addition to considering the best way to distribute your intellectual property to your beneficiaries, you'll also want to consider which of your loved ones is best suited for owning and managing these intangible assets, as well as how you'd like those assets to be used for the benefit of your loved ones.

Intellectual property, such as trademarks, copyrights, and patents, can be leveraged to create revenue in a number of different ways. Your beneficiaries could simply sell your intellectual property assets outright, or they could use the intellectual property as collateral to take out a loan. Or they could decide to license the use of your intellectual property to others, which can generate an ongoing revenue stream that can last indefinitely. Indeed, as we saw with Bob Ross's case when properly managed, the licensing fees for a company's intellectual property can generate millions in revenue, and that income stream has the potential to continue for generations to come.

Avoiding A Not-So-Happy Accident

Don't let what happened to Bob Ross's family happen to yours. If you own a business, it's absolutely crucial that you put in place an effective estate plan, including a comprehensive succession plan, to ensure that all of the wealth and assets you've worked so hard to build will be properly passed on to your loved ones in the event of your death or incapacity.

Furthermore, you must also ensure that your estate plan is properly coordinated with your business agreements, or your estate plan may not work as intended. And in that case, your loved ones may find themselves in the same situation as Bob's son Steve, who was left with virtually nothing, while the business built on his father's name and persona continues to bring in millions of dollars every year.

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As your Personal Family Lawyer[®], we know that your business is one of your family's most precious assets, and with our support and guidance, we can ensure that it will continue to provide the maximum benefit for your loved ones following your death or incapacity. If you haven't taken the time to put proper estate planning in place, consult with us, your Personal Family Lawyer[®] today, so we can help you find the estate planning strategies best suited for your asset profile and family dynamics.

And if you already have an estate plan—even one created by another lawyer—you should have us review your plan to ensure it will work as intended and that it's properly coordinated with your business agreements. Contact us today to get started.

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