

Speaker 1: 0:07

This is Shay M. Lawson Esquire and you are listening to a minute of your time a podcast helping entrepreneurs legally protect their passion and profit. Today is a great episode you have a tree in store. I have sat down with another attorney Delania Barbee, and we are going to talk about how to protect your legacy. You know, we talked about protecting your business but we're thinking about it when you're here when things are good. And if you know you are listening to this right now, while this is being recorded, we are in day eight or so of the corona crisis. And so it really makes you think about getting your ducks in a row getting your business together planning for the unthinkable and so that is what we are doing in case you're ever incapacitated in case the absolute worst happens, what happens to your business? How can you make sure your loved ones, you know, continue to get the revenues that you are generating? How can they be passed along your intellectual property, things of that sort? We wanted to talk to her and get her insights as an estate planning attorney on how to protect your legacy as a business owner. Really, really great stuff here. It's way more detailed than my regular content. So I've prepared show notes if you go to shaymlawson.com into the site and click podcast show notes. You will see this episode and once you enter that episode link, you will be able to see notes from the show just to see the different topics that we talked about and also get that downloadable from attorney Barbee, it is going to cover a lot and these things are just so critical. You don't want to pour your time your energy, your money years of your life into building a profitable business, you know, really moving your passion into something that generates a legacy for you. And then it all goes away in the blink of an eye should the unthinkable happen and so I'm really just excited to bring you guys this information because it's much needed. And without further ado, we're going to hop into it.

Speaker 2: 2:37

Sure, so, again, my name is Delania Barbee. I am the Founder and Managing attorney of Barbee law boutique PLLC. I prior to this, I actually worked for a law firm and before that worked in house, primarily in the business law area, but you know, I had that entrepreneurial bugs like so many of us and went out on my own. And mostly, I would say that it's a virtual practice primarily, but I do meet with people in person as well as needed. But the way things are now, I

think that it's just beneficial for all business owners to try to take advantage of technology. And I do the same in my personal practice. So for example, right now, at the time that we're recording, many of us, all of us really be in the house at this point, because of everything that's going on with Corona virus. And for those of us who have been able to move virtually and have the fortune to be able to do that, we are not going to at least in the short term, experience those same interruption, so it's been great moving, mostly virtually, and but I do still love the human interaction, which is why I allow for the in person as well.

Speaker 1: 3:50

Awesome, awesome. Thank you for sharing that background. So I want to dive in because I know my creatives are just itching to get this information. A lot of musicians have like publishing and royalties where they might be getting, you know, their ASCAP and BMI and they might be getting sound exchange. And you know what payments from their record label and these are just income streams and the income streams might be going to an LLC, and not directly to them. How can they make sure that should something happened to them? Should they pass away that all of that, all of those different revenue streams now automatically go to their spouse or their children? How do you transfer revenue streams upon death, especially if it's via an LLC?

Speaker 2: 4:43

Good question. And this is where I am reminded to give my disclaimer that this is general you know, educational information, and it's to get you started about thinking about the issues but this definitely doesn't take place. Have you meeting with an attorney on a specific needs, I also put that in the download

5:00

document that she just mentioned. So don't this is definitely not a comprehensive conversation and don't rely on this as your legal advice.

Speaker 1: 5:09

Am I correct that people need to find a lawyer in their state? Because every state has different trust in the state laws, correct?

Speaker 2: 5:19

Yes. So it doesn't have to be a lawyer that's physically present in your state so long as they're licensed in your state.

Speaker 1: 5:25

Okay. All right. Thank you. Okay. So yes, how can if the revenue streams from my publishing your royalties are going through an LLC? How can I make sure that once I pass away, my partner or my children are now entitled to those streams, especially if they're going through a business?

Speaker 2: 5:44

So there's a couple of things there. So one, if it's not going through a business, you could, you know, work with the company that's giving you your royalties to assign it directly to your trust if you have worked with the trust. So that's one thing to think about, if that's the approach you're advised to take or would want to take given all the information, but most people would have it going to a business entity, as you mentioned. So they already have set up an LLC or something like that. And that's getting their royalties. And there's a couple of things here that you can do. So, one is, you know, estate planning is one thing, but business planning is another thing, and they can be done together. So at the simplest level, you can actually have your trust, own your business. So you're trusting like I was mentioning earlier, that's the great thing about a trust for people who have actual assets, that the trust can be assigned to interest in the business so that the trust continues to manage the business and everything that comes through that business. Even if you pass away for the benefit of your beneficiaries. So the money that's coming through, assuming that I'm assuming that you're the only person on the business, the money coming through, then, you know, eventually it comes down to your trust. Depending on how everything's

drafted, and your beneficiaries get the benefit of that revenue that's continuing to come out of that.

Speaker 1: 7:08

How would that work in life? So if you're saying the trust owns the business, but I am still living, how would I get paid my royalties while I'm living? Am I now a beneficiary of the trust?

Speaker 2: 7:23

Well, you would continue to get paid through your business entity. So you can continue to get paid to the business entity. The thing with what I'm getting at is that if the trust owns the business, your business continues to run because the trust is the owner of the business, essentially, think about it that way.

Speaker 1: 7:42

Okay. But if you are a sole member, all right.

Speaker 2: 7:45

But you're continuing to get paid just as if you would get paid any other time. And so, so a good example of this is let's say you were to pass away or the person who owns it was to pass away. The trust continues to manage it and whoever is employed by the business would still get paid. So you could have, I don't know, it could be your whoever in your family who ends up working for and managing day to day operations of the business continues to get paid through that, that doesn't stop, but the profits that are coming from the business can go into the trust, just like any other business would work.

Speaker 1: 8:23

Alright, so there are multiple layers to this. So if you are a single member LLC, once you die, and let's just say this isn't set up. If you are a single member LLC, once you die, the business is technically dissolved because it can no longer operate because the sole member of the LLC has

now passed away. However, if you have the LLC as the owner or if you have the trust as the owner of the LLC, should you pass away the business would still be able to operate and if your spouse or your children are whoever you want to get the revenue streams are employees of the LLC, they will still continue to receive those revenues because they are employees of the business as if it were still running with you at the helm, correct?

Speaker 2: 9:14

Yes, sort of. And this is, you know, a complicated thing, which is why I always say definitely meet with your lawyer to talk about it, because it depends so heavily on how you have everything structured. But essentially, yes, so if you were to pass away, and you're a single member LLC, you have that and you don't, let's say you don't have anything or you just have a will, because it will still go through the probate process, the probate court process. So you pass away at this point, no one's at the helm of the LLC. So either if you have a will, your whoever's your personal representative then takes over to figure out kind of what to do with this business. They don't necessarily, you know, it's complicated, but they're just trying to figure out you know, whether to liquidate it, and get the assets out and distribute things to other people.

10:00

But with the trust that emergency doesn't happen, because the trust continues to own the shares of the LLC.

Speaker 1: 10:06

Correct. Okay, thank you. That is super awesome. Okay, so we've been talking a lot about trust. And the question that I had is that you see all the time on the internet where people are talking about how Allen Iverson had like this a trust or like this annuity or whatever for his money that he got from Reebok. And so he never directly got the payments and that's how he still has money now because they are paying him out from you know, Reebok now, and, you know, everybody kind of posts this you know, how stuff goes viral on the internet of like, Oh, this is what you should do. This is what these celebrities should be doing with their money. There's no reason for

them to be broke. And it's like, is this really what celebrities should be doing? If I get a lump sum if a record label signs me to do a deal for million or 2 million, I get an endorsement deal, you know, with this company or that company and I get a fat check, you know, for six figures or something like that is that what these creative should be doing with their lump sums is should they? I don't understand how putting it in a trust equaled him getting paid like can you be the beneficiary of your own trust? Is this something creatives should explore as an option since money kind of ebbs and flows in the music industry? And I know that you are not a financial adviser. But is there some kind of fiscal benefit to not receiving the money and putting it in a trust and getting just partial payments annually?

Speaker 2: 11:52

So you are initially your beneficiary of the trust typically, that's how it's structured because you're still alive. So whenever it goes in the trust, you'd be better benefiting from. But in terms of just putting a lump sum directly in a trust, I'm not familiar with the Iverson situation. But I'm not sure that that's the way to go or whether that would make his most sense. Maybe he used a financial tool. So I heard you mentioned an annuity. So he may have worked with a financial advisor, who had funds that came out to him at certain periods of time that were invested. That's what I might be thinking happen. And with the financial tool, the financial tool itself could have been named and are assigned to the trust. So that could be what was going on. So one of the things for example, I have on the checklist, as people will see when they download it is in life insurance. So with life insurance, a trust can be the beneficiary of the life insurance policy. And you may wonder, why do that? Well, particularly people who are at a certain net worth, depending on what state you're in your state can be taxed when you pass away. So most people don't have liquid assets, which means you don't have cash on hand to pay the taxes that you need. So people will use life insurance policies as a way to pay the taxes so that their family is not selling their business, as we talked about to get the money because, you know, your, trust me own the business, you can liquidate that for cash, but people might not want that your homes or home, they don't necessarily want people have to sell houses. So the life insurance policy allows for that. So financial tools can be named in the trust and I'm thinking maybe that's something

similar to what he did. He either had the trustee the beneficiary of that policy, and kind of accumulated the funds in the trust and use what he needed for now, or something of that nature, but I'm not exactly sure what his what's his case.

Speaker 1: 13:55

Okay, awesome. Thank you. And I think it's super important that like, we see on the Internet, and you want to ask a professional about it, because these things could be right or wrong, you know, and so it's just like that makes complete sense. And so that's a really cool option and number one, like all of these things work together and I think especially like creatives, I know all of this stuff is really scary and really detailed. And that is why you want to reach out to professionals because you work too hard on your passions to finally have them be profitable. And then to like see that go up and smoke you know, because you don't have all of these kind of foundational things are these ducks in a row because you were scared of the details? You know, it's like are you more scared of the details are scared of dying with nothing left for your family, you know? So I guess that brings me to my last question. What are the three like if there are three things or if there are more than tell me that there are more but are there just

15:00

some core basic things that creatives should have in place in case the unthinkable happens, especially because they have so much intangible stuff like copyrights and trademarks, and maybe, you know, things like that.

Speaker 2: 15:19

So yes, we talked about a lot of different things, and I'm sure it can get overwhelming, especially for people who may be hearing this for the first time. So I like that you're asking for the top three things. I would say the top three things to think about are first, your durable financial power of attorney, because you want to have a financial power of attorney in place in the event that you're incapacitated, and someone needs to take over financial management of your assets and to keep things moving sign documents as necessary. So you want to have that. Second, your healthcare

power of attorney again, the people may be the same people but they could be two different people. You want to have your healthcare power of attorney in place so that if you're sick and can't make your own decisions, whether that be through some type of physical ailment or mental ailment, someone is able to step right in whoever you have named, and can take over those things, you know, manage your healthcare as well. And then the third thing I would say is a will. So you will want some document that manages your legacy. So the other two documents manage while you're alive and your power of attorneys terminate when you pass. So whatever you had in your financial power of attorney, it doesn't matter. Your healthcare power of attorney obviously that doesn't matter. And I think.

Speaker 1: 16:32

Whoa, I didn't know that. So when you die, your powers of attorney terminate and whoever is over like your next of kin or you know, your state administrator, that's who now has power over everything.

Speaker 2: 16:47

Yes, and I think that's a common misconception. People have there. I've had people say, Well, I'm good on my estate plan because I have a power of attorney and I'm like, you're okay right now.

Speaker 1: 16:58

Wow, my mind is blowing right now. Like I am the mind blown emoji right now. Okay.

Speaker 2: 17:04

Yeah, at that point, when you're passed away, you need someone to now take over and manage the assets. So you at least need to have your will in place to determine who that person is going to be. Because I think you just mentioned, you know, whoever, if you don't have that, it's very, it gets hairy, you know, people are going to court to try to figure it out and using whatever statutes laws that are in place, but you don't want people to have to fight or even if no one's fighting, and it's just one person, you don't want them during this difficult time to have to go to court and go

through the motions of getting appointed. So having that clearly defined in your will would be helpful. Again, your will can at least talk about who your beneficiaries are going to be. So even if you don't have a trust, where everything's held, you at least have the will talking about who's going to get the benefit of the assets that you have. You can mention your intangible assets. You can mention your trademarks or copyrights, your domain names. You can mention things like that. As well in your will. So at minimum, I would say those three documents would form the basis of your estate plan. But definitely, depending on what you have, and what makes sense for you, you may want to consider some of these other tools that we talked about and some of the things that are mentioned inside of the PDF.

Speaker 1: 18:18

Awesome. So again, yes, the PDF in the link will be in the show notes. So if you go to shaymlawson.com backslash podcast show notes, you will have the notes for this show and a link to download the Delania's entire estate planning checklist and it's honestly not just a checklist. It's more it's telling you everything that you need to get yourself together it is explaining each of these concepts in detail is something that we both want to reiterate as attorneys is that this is not individualized legal advice of fit for every situation, you definitely want to make sure that you set up a consultation take this time, we are available, we can do. Consultation lawyers are available during Corona quarantine, like reach out and get your business together. It's never too early to get your business together or if you are still breathing, it's not too late for you to get your business together. And maybe let's end on that note, if someone is looking for an estate attorney and they decided, hey, I want to get myself together. Number one, what states are you licensed in? And where can people find you if they want to reach out for a consultant or consultation? And then the second question I have are, what key competencies should people be looking for in an estate attorney to say hey, I think I'll go with this person as opposed to somebody else.

Speaker 2: 19:58

I love that question. So before I get into that

20:00

one. I am licensed currently in Massachusetts, in Connecticut, but definitely looking to expand into some other states as well, given the demand and the need. So continue to look if you're interested, you know, look at Barbeelawonline.com. That's my website, and you'll find the latest. So hopefully by the time you look at this, I might be expanded in your state as well. In terms of key competencies to look for with an estate planning attorney, I would say a number one look for someone who, you know, does this work as a substantial part of their, of what they do and are passionate about this? Because I think their passion really come through and make it so that they really care about what they're doing for you. And they're not a document preparation service. So that's a difference.

Speaker 1: 20:52

What is that? What's a document like? Why shouldn't I use a rocket lawyer or a Legal Zoom or I've been paying for legal shield like, explain what is that?

Speaker 2: 21:03

So, I said it in the context of a lawyer, but definitely as well you know, one of those type of websites where you're putting in your information and they're spitting out a document, they're not giving you the strategy behind what makes sense for you, you're coming in thinking that you know, what's right for you. So for example, let's say you get off of this, and you're like, I'm good. I don't need to meet with a lawyer. You know, we just heard this podcast, I'm going to go on this website and do it. Again, this was not individualized to you. This was generic in nature. So you missing out on that strategy that makes sense for your outcomes and what you need to protect your family. Because every family is different in your own situation, in terms of estate taxes, and other things that you might need to consider for your life. If you have children, there could be things that you need to think about as well. But instead, you're going on a website and just putting in information. And sometimes it doesn't come out correct because they're relying on what you're putting in. And if you're not fully informed on what it is you need, then it could be

wrong and may cause more problems for your family in the long run, then helpful because something's incorrect in a document and notarized and assigned it. The second thing, what I was talking about with some of the lawyers that you might be working with is sometimes you know, they're just not all created equally in terms of the awareness and the strategy in terms of estate planning. While someone may be great on some other area, it may not be that they're really passionate about this area. So they may not go in depth with the strategy. So someone could easily just, you know, drop a will for you, you say, this is what I want, and they can drop a will for you and give that to you. And if that's what you want, and they're at least competent to do that, then maybe you go with them. But you may want to sit with a lawyer who's really going to sit down with you and understand your goals, your needs, your wishes, your desires, for your life and for your legacy for your loved ones and not just going to put down what you say on a document. Make it make sense make sure that whoever you're consulting with you understand. You understand what they're trying to accomplish with you and you feel get a good vibe from them. I think that's the most important that they're really passionate about this.

Speaker 1: 23:14

I love that because creatives are all about vibes, you want to make sure. It's absolutely right. Like somebody's not rushing you in and out that they're not trying to burn and turn and take your money.

Speaker 2: 23:26

Yeah, another thing is, I just have to say with that, if it's too cheap, you might want to raise the red flag. I know that.

Speaker 1: 23:33

Okay, wait, let's talk about money. Let's talk about money. I'm all about securing the bag. Okay, how much should somebody potentially can you give a range of how much somebody should budget let's just say they only do those three things of like, the financial power of attorney, the

healthcare power of attorney and a basic will like how much does somebody budget for those three things?

Speaker 2: 23:55

At the most basic level, depending on who you're working with, you know, it could be maybe two to \$4,000, I'd say.

Speaker 1: 24:04

Wow, that's a lot of money. That's my RicK Flair. Whoooooo, oh my Gosh, do lawyers work on, like, payment plans? Installments? Could I get one thing per month from you? How does this legally work? Or is it just a flat fee up front?

Speaker 2: 24:22

So well, there are some attorneys who charge hourly I don't do that. Because for the reasons we cited, you know, you want predictability. So depending on your situation, we actually, I'm the type of lawyer who we do sit down and have a conversation and we design your plan together, depending on your objectives. And that's how we come up with a fee. So you're kind of choosing your own fee when you're working with me, depending on all the bells and whistles that you want. But let's say you fall in the 2000 to 4000 category. Most lawyers who offer flat fees will also do some type of payment arrangement for you. So you're not paying that all up front. And, you know, you need to not think about this as a cost but more so an investment.

25:00

So that's important to shift the thinking like, whoa, I'm going to pay for two to \$4,000. For something that may not happen while you're definitely going to pass away at some point. So it is going to happen. So I can guarantee you that part of the question is, I'm just saying, and, you know, the question is whether you want your family to have to cop up these expenses later on, and have to deal with everything that results from the fact that you did not plan earlier. And, you know, potentially that everything you worked for was loss. If you don't know, if you're not

working on this, you're not putting something together some type of plan, you don't know what's going to happen afterwards. So everything that you're working for now could be for no reason could be temporary, you know, so you want to just think of again, think about this as an investment for your loved ones in the future for yourself, because as I mentioned, some of these things, also deal with your lifetime. And if something were to happen to you in the short or long term, where you can make your own decisions, you don't want to come out in debt, no one paid your bills. You know, medical decisions were made incorrectly because you didn't have the right person and pointed your family's arguing you don't want that to happen. So consider making this investment again, lawyers may charge differently but I do get wary if it's too cheap that you know you might not be getting the full again strategy and consulting behind what makes sense for you and your loved one so if it's a higher price point, try to be comfortable with that. And you know you can ask is no problem with asking about you know how they came up with their fees, that's fine. But think about that as well making your decision.

Speaker 1: 26:34

All right, those are the gems I think that we got it all locked in. I'm actually I am super excited to share this with my audience. This is I know, I will not be the only person like that their mind is blown by hearing this but this is stuff we absolutely need to do. We need to protect our legacy and you know, we had a lot of our stars pass away without wills, you know, like Prince died without a will. Aretha Franklin died without a will. We have too many people with such rich legacies, you know, passing away. And we have a lot of this is like the era of entrepreneurship. And so a lot of people are really pouring their heart and their soul into their business and their passion and whatever they're creatively doing, and you don't want to pour all of this into your passion, make it profitable, but you've done nothing to protect it. So Delania I want to thank you for your time today. Once again, tell people how they can follow you online.

Speaker 2: 27:38

Sure, so my website is Barbeelawonline.com the Instagram and the Twitter for the firm is Barbee law. Or you can find us Barbee law online on Facebook. If you want to connect with me

personally, I'm not always talking business in law, but you can follow me at Galena Esquire on Instagram as well. And Shay, I thank you for having me, we may have to do a part two at some point because I could definitely keep going. I'm so jacked. But it's been a pleasure.

Speaker 1: 28:15

I told you guys that this was going to be a good episode. I mean, this conversation obviously blew my mind. And it taught me a lot. I always tell people to stay in your lane, I can talk you until I'm blue in the face about contracts and intellectual property. But I don't specialize in every different type of law. And so it's a really great to get attorneys who specialize and who are knowledgeable and passionate about other areas of law to come on and talk about how you can protect everything completely contracts and IP or just one aspect. Once you've done that foundational work and you build your value, you want to make sure you can pass that value along and that's only if you have your estate planning in order. So I'm just super grateful for the Delania and the time that she took to just speak with me and make this resource for you guys, so please don't forget, go over to ShayMlawson.com click on podcast show notes and you'll be able to pull up this episode. It is episode nine and you will be able to download this estate planning checklist from her. And I actually have a bonus episode coming up. So if you are Corona quarantined or just catching up on episodes because you just discovered my podcast. Stay tuned for the bonus episode where we really deep dive into getting a trust versus a will and just a lot more of these concepts. The conversation was just so rich, I couldn't fit it into one episode. So we have a bonus. Definitely tune in and listen up and until next time, this has been a minute of your time, subscribe on Spotify and tell a friend who needs to get their business together.