

CONTINUATION OF FAMILY BUSINESS

This area concerns sole proprietorships, partnerships, and close corporations. The major question here is: should the business be continued? There are several choices available to the personal representative:

1. Cease operations and sell assets ;
2. Sell the business as a going concern;
3. Continue operation of the business.

If continuing the business is the choice, there are certain business decisions that have to be made:

1. Management: who's going to manage the business?
2. Marketability of the entire business: maybe it's better to sell now while it's still worth it.
3. Is the executor the sole beneficiary? If not, he/she might have something to say about a personal rep operating a business that he or she is going to inherit.
4. Cash needs of the estate.
5. Licensing requirements: does the personal rep need a special license (law, medicine, contractor, etc.) to operate the business?
6. Goodwill of the going concern.
7. Likelihood of success or failure if the personal rep operates the business.
8. Must the business be continued? (Farms, construction, etc.)

Under PC 9760, if it's in the estate's best interest and to its advantage, the personal representative can continue operation of the decedent's business, but for no longer than 6 months. After that time, court approval is needed, or, under IAEA, a Notice of Proposed Action must be mailed out.

If the business is Community Property or in Joint Tenancy, no court approval is necessary to continue operating the business (unless it goes to someone other than the surviving spouse). It may even be possible to transfer the business as a whole to the heir or beneficiary using the summary procedures under PC 13100.

If the personal rep has independent powers, no court approval is needed to operate the business. Instead, prepare a Notice of Proposed Action. (See PC 10534 - operation is subject to the terms of the Uniform Partnership Act and any partnership agreement.) Also, if the Will gives the executor the power to operate or continue, no court approval needed. Check the local rules as to notice requirements. Usually the executor must notify the five biggest creditors if the executor decides to continue or liquidate the business. Obviously, they might have something to say about that. In addition, if the business is to be continued for more than six months, a Notice of Proposed Action is required.

Emergency situations: File a Petition for Probate and for Special Letters of Administration. Give notice (usually 5 days) to the heirs/beneficiaries). Bond will probably be required by the court. Examples of emergencies: meeting payroll; carload of lettuce is rotting; construction in progress.

Specific Cases: If a business has been bequeathed to specific heirs, have a meeting with the heirs and the executor and decide whether to continue. Can the executor hire management to take place of the Decedent? Probably, depending on his powers. Is it wise? That also depends - on whether the business should be continued, or whether one of the heirs might be the better person to manage the business. Obviously, the executor risks a lawsuit if he/she slips up here.

Professional businesses, such as law practices or medical offices can't be continued. Suggestion: find a buyer. Contact the local or state professional society for help with a sale. Under PC 9764, the court, upon petition, can appoint a "practice administrator" (attorney) to take charge of the deceased lawyer's files and assets of the law practice. A bond is required. The court may not appoint the personal representative's attorney. Fees must be approved by the court, and at the conclusion of the attorney's services, the practice administrator must file an accounting.

If court approval is necessary to continue a business, tell the court about:

1. Financing
2. Management
3. Insurance
4. Right to liquidate
5. Valuation of the business
6. Taxes

Corporations: The stock owned by the decedent goes onto the I&A, not the business itself. Valuation of stock in a closely held corporation can be difficult, so it may be necessary to hire a forensic accountant. For most other corporations, the value of the stock can be found by looking in the financial pages of most newspapers.

Limited Partnerships: If Decedent is a Limited Partner, it's easy to determine what to do: Decedent has no liability because he or she has no management voice. The executor inventories his/her interest only. Accountants frequently use the value on the decedents tax returns for the previous 3 - 5 years, or on the K-1 Partnership Information form. If there's no other way to value the interest, ask the other partners.

General Partnerships: Who manages/continues the partnership? Is there liability for the debts? Unless a court orders the continuation of the partnership, death dissolves a it. The survivors must wind up the business and account to the executor/heirs. If they don't account, get a court order for an accounting. Often, partners will enter into Buy/Sell Agreements in

partnerships. Use them to allow a buy out of the decedent's interest. However, if it's not wise to dissolve the partnership, get a court order to continue it. The executor can be authorized to act as a general or limited partner, unless inconsistent with the terms of the agreement, and subject to approval of the surviving partners. Generally, it's not wise, though, because of liability of the executor for losses and debts of the partnership.