

Estate Planning for Owners of Intellectual Property

If you are an inventor, author, artist or owner of a closely held business, you may have already considered and even implemented ways to ensure the protection of your intellectual property rights. Certain types of intellectual property, such as business ideas, visual art, published or unpublished literary or musical works, inventions, computer programs, designs of clothing and architecture may be protected by law through copyrights, patents and trademarks. It is important to plan your estate carefully by considering these valuable assets so that they are appropriately transferred to your heirs according to your wishes upon your death. Intellectual property is an expression of an individual's knowledge and ideas. It is an intangible asset that results directly from a person's work or trade. Each estate that owns intellectual property must take into account the uniqueness of the asset and each such asset must be dealt with individually. As intellectual property becomes more defined, so is this area of estate planning becoming more complex and ever-changing.

Preliminarily, it is necessary to come to an understanding as to whether an item of intellectual property can, in fact, be bequeathed to the owner's heirs and beneficiaries. Certain types of intellectual property may have rights of renewal or termination that were bestowed upon them by virtue of their copyright, patent or trademark. At some point, the intellectual property will be public domain and not able to be devised to a loved one. In such situations, it might be appropriate to appoint a separate trustee or executor to be responsible just for such assets upon the death of the owner.

Just like any other asset in a decedent's estate, or in the decedent's trust estate, the intellectual property must be appraised and valued. This can be quite challenging to the accountant working with the fiduciary. The IRS has some guidelines for certain types of intellectual property such as literary works. Literature is valued by assessing the copyright's future earnings potential reduced to its present day value. It is possible to utilize this type of valuation process, but one must take into account how far into the future such an asset might continue to potentially earn. Thus an analysis of future trends must also be taken into account.

Taxation of intellectual property in an estate is also something of a concern. It is not uncommon for an executor of a best-selling author to have to sell the future publication rights to an unpublished work in order to obtain the liquidity to pay the estate's taxes. Where there is significant intellectual property in an estate, it is important to keep in mind the potential tax liabilities that might be realized upon death. There are two potential ways to avoid paying such unwelcome taxes. One way is by purchasing life insurance through an irrevocable life insurance trust. The inclusion of life insurance in your estate plan can help secure the future rights for the beneficiaries or heirs of the decedent in the intellectual property.

Another way to avoid paying estate taxes resulting from ownership of intellectual property is to include charitable giving of some or all of the rights to certain intellectual property in your estate plan. If the estate of a decedent receives a charitable contribution deduction against estate taxes based on the fair market value of the gift at death, there may be a considerable offset and yield a better result than by charitable giving before death, because such deduction is based upon the lesser of the cost basis or the fair market value at the time of the gift.