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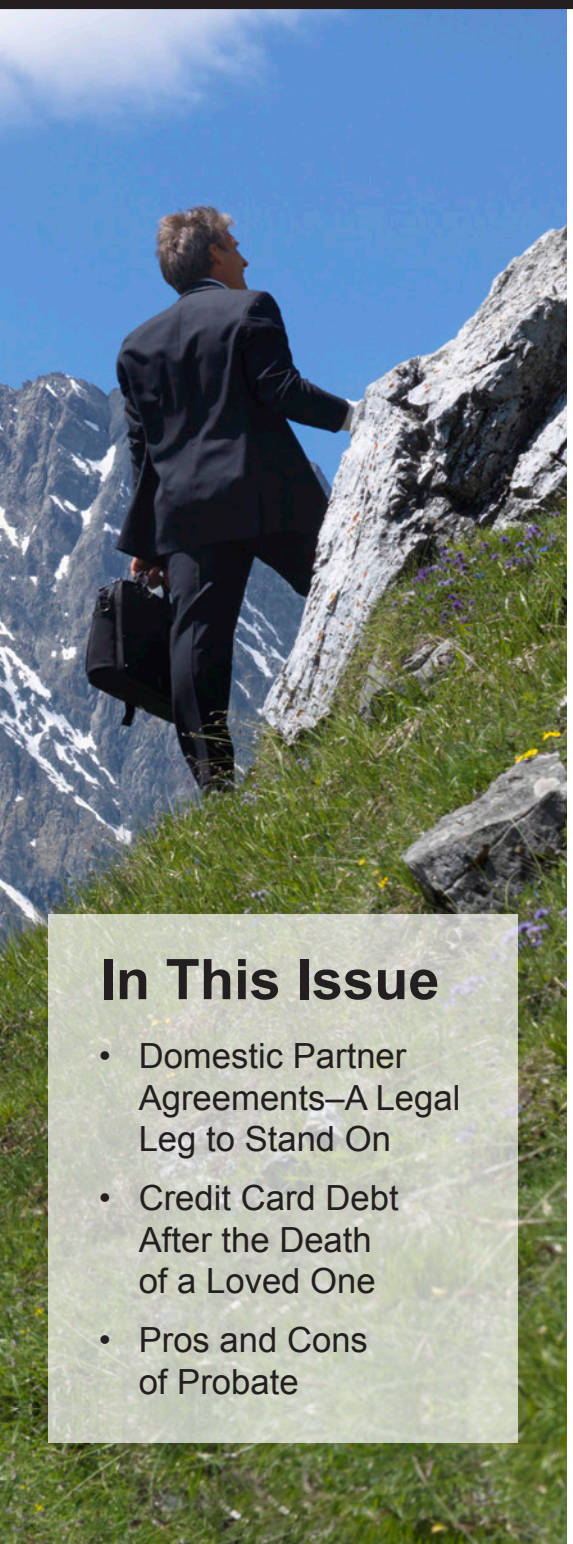

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When the Going Gets Tough: Cultivating Resilience

Building and sustaining a business is not a task for the faint of heart. As anyone who has launched a business from the ground up knows, transforming an idea into a successful enterprise requires not only technical know-how, but also a steadfast willingness to work hard and weather the setbacks that inevitably come with establishing a new business in a competitive marketplace.

But when the going gets really tough, how do you maintain your energy and optimism? While most of us are born with some ability to cope with adversity, resilience is also a skill that can be learned and cultivated. By considering in advance how you would recover from an adverse change in circumstances, you can prepare yourself to bounce back quickly from even the most challenging situations.

While there are some practical steps you can take to protect yourself from potential setbacks, such as having sufficient insurance and savings, problems may arise for which no protection is available, such as an abrupt downturn in the market or the unexpected loss of a major client or key employee. By approaching these unanticipated setbacks with the right attitude, you may be able to address the problem more competently and more quickly.

Keep in mind that resilience does not necessarily mean going it alone. By building your personal and professional networks, you ensure that you have trusted allies who can provide encouragement and advice when problems arise. While friends and family members can be an invaluable source of support in a crisis, they may not understand all the issues you face in your business. By joining industry organizations and getting to know other people working in your field, you create a support network of professionals you can consult when weighing how best to handle specific problems related to your business. An experienced mentor can also provide insight and encouragement.

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Domestic Partner Agreements-–A Legal Leg to Stand On

As we journey further into the millennium, there are many forms of personal relationships. Today, unmarried partnerships are a fact of life. If you are in an unmarried partnership, one important consideration is how you share financial assets and obligations. Married couples have the benefit of the law to protect their rights, dictate their responsibilities, and guide the disposition of property in the event of separation or death. On the other hand, few, if any, laws govern the rights and responsibilities of unmarried partners. If you are planning on "sharing" your lives, here are some questions you might want to answer:

- What right do you expect to have to each other's income now, and if your relationship ends?
- How much responsibility will you each assume for household expenses? Will you split costs according to income, use, or some other measure?
- Will you share joint bank accounts and credit cards? If so, how may they be used?
- Who owns the property you each bring into the relationship? Who owns the property you acquire together, and how will you divide it if you separate?
- What are your intentions for the distribution of your property if you die?

Covering Income, Expenses, and Property

A **domestic partner agreement** provides a legal way to address these concerns. It is a written contract between unmarried partners that primarily covers the sharing of income, expenses, and property. It clarifies ownership rights and directs the distribution of the property if the relationship ends. It also provides a valuable supporting document for other legal instruments, such as deeds of title, living trusts, wills, and durable powers of attorney. For instance, in case of death, it can support your partner's claim to jointly-held property by verifying your intent to pass the property to your partner, rather than to your legal next of kin.

Some couples even use domestic partner agreements to address non-financial concerns, such as who will wash the dishes and who will trim

the lawn, although courts generally provide only limited remedies for so-called personal service agreements.

Pros and Cons

A domestic partner agreement offers some important advantages. By setting clear ground rules, it can help prevent disagreements before they occur. It can also help ease the handling of disputes in the event of separation or death, possibly averting costly and emotionally draining legal battles.

Despite its potential benefits, a domestic partner agreement can be a delicate subject to broach, especially if you and your partner have never held frank discussions of financial matters. Only *you* can decide whether a legal approach will help or hurt your relationship, and whether, on balance, the long-term advantages are worth it. If you do choose to proceed with a domestic partner agreement, bear in mind, it will require periodic updating as you continue to acquire property together.

Some relationships endure until death with no major financial differences. Other relationships end, yet the partners separate amicably. However, if your relationship ends—and you and your partner differ about who gets what—without a domestic partner agreement you risk leaving it to a judge to divide your commingled assets and ultimately determine your financial fate. It is best to consult a qualified legal professional to prepare your domestic partner agreement or, at the least, to review it.

When the Going Gets Tough: Cultivating Resilience

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However, just talking about problems does not resolve them. You must be prepared to take whatever action is necessary to meet the challenges ahead. Start by making a detailed list of possible ways to address a problem, and then assess pros and cons of each. If, for example, market conditions have changed, revisit your business plan and adjust your goals to the new environment. Rather than becoming discouraged because you are unable to meet your original goals, set your sights on hitting new targets. Don't be afraid to consider unconventional strategies, such as partnering or bartering with other businesses, or branching out into a seemingly unrelated business area. Simply by doing what you can each day to improve your situation, you may find that you are gaining positive momentum that can help propel you forward, despite obstacles.

If current circumstances cannot be easily changed, strive to accept the situation. Some problems, such as a downturn in your particular market, could remedy themselves with time. If work is slow, consider taking breaks to travel, get outside, or spend time with family or friends. Catch up on sleep, get more exercise, improve your diet, or clean out your closets at home. Focusing on your overall well-being—and getting some distance from the business-related issues you have been focusing on so intensely—can generate a much-needed shift in perspective and provide new insights into solving some seemingly insurmountable problems.

Whatever your difficulties, do not overlook the assets you have acquired. Take the time to appreciate the strengths within your organization. Even if you have downsized your workforce in response to the economy, remind your remaining employees how the company can continue to be competitive, despite the challenges in the marketplace. If you demonstrate a steadfast willingness to work hard and weather the inevitable ups and downs with energy, optimism, and resilience, your staff may also do the same. Together, you can work toward the success of the business.

Credit Card Debt After the Death of a Loved One

After a loved one dies, who is responsible for his or her remaining credit card debt? This is a question you are unlikely to be thinking about in the days and weeks after the death, but it is one you will ultimately need to face.

In many cases, family members are not responsible for the debt, but there are a few exceptions. Luckily, while you and other family members sort out the financial impact of the death, you are protected by the Federal Fair Debt Collection Practices Act (FDCPA), which prevents debt collectors from using abusive or deceptive practices to collect a debt. According to the FDCPA, a debt collector might be a collection agency, a lawyer who regularly collects debts, or a company that buys debts and later attempts to collect payment.

When a spouse or other individual is a joint owner of a credit card account, that person is obligated to pay the debt after the death of the other co-owner. Most often, the co-owner is a spouse, but adult children will sometimes become authorized to use a parent's credit card account, to help the aging parent with financial matters. They then become liable for unpaid credit debt after the death of the parent.

If the widowed spouse lives in a "community property" state, such as California and a handful of other states, he or she may be liable for the credit card debt, even if the account was not co-owned. In such states, debts incurred after the marriage may qualify as community property, which means that, regardless of the credit card agreement, the surviving spouse is responsible for the debt. Also, some states may require that particular kinds of debt, such as debts related to health care, be paid by the spouse. Particularly given the differing state laws, it's a good idea to speak to an attorney to better understand your obligation.

When a relative or other person is not responsible for the uncollected debt, the responsibility falls to the deceased person's estate. The executor of the estate (or an administrator appointed by the court if there is no executor) is responsible for using the estate assets to pay the debt. If the assets do not cover all or any of the debt, the debt is wiped out. This means that the deceased person's heirs will not inherit the debt.

Pros and Cons of Probate

Two main responsibilities of the probate court are to determine the validity of a **will** and to ensure that it is faithfully executed. Although most states have exemptions for smaller estates, a will ultimately falls under the jurisdiction of the probate court.

Similar to a will, a **trust** involves the transfer of assets. **Testamentary trusts** are subject to probate because they are created by a will at death. If you wish to avoid probate, one option may be to implement a "**living**" or **inter vivos trust**.

Since there are both advantages and disadvantages to the probate process, let's consider some of the following points to determine how probate could affect your estate:

Advantages

Fair Estate Value. If your heirs believe your property has been overvalued, and therefore potentially increasing the estate tax, a lawyer or executor can consult with an independent appraiser. The judge may approve the new appraisal or choose a value between the independent appraisal and the court-appointed appraisal.

Protection from Creditors. Once an estate has been probated and its assets distributed, creditors cannot make any further claims against the assets.

Lower Legal Costs. Drafting a will is often less expensive than drafting a living trust or other legal document in an attempt to avoid probate.

Disadvantages

Higher Costs to the Estate. Probate can be a costly process. Fees are set by law in some states, and they may be based on gross, rather than net, values. They generally cover only "ordinary" services. If an attorney performs "extraordinary" work, the fees may be higher. The executor may also charge fees, and unless those fees are waived, the cost to the estate may double.

Delay on Transferring Assets. Settling an estate in probate can take a year or more. During the settlement period, assets in probate are often managed conservatively. In some states, it can take a month or more to receive court permission to sell an asset. This delay may prevent an executor from responding to sudden changes in market conditions. During probate, executors may choose to act conservatively to minimize their risk of financial liability.

Public Knowledge of the Estate. The probate process is a matter of public record, so a will is open to public scrutiny.

Probate laws, with their advantages and disadvantages, vary from state to state. Be sure to consult with a qualified legal professional to determine how the probate process may affect your estate, and whether a living trust may be an appropriate alternative.