

## **Are you prepared – setting up a succession plan**

Daniel Amato, Vice President

American Surety Company

September 2003

Heart Attack! Stroke! Murder! Auto Accident! Airplane Crash! Cancer! These tragedies and others befell bail agents I have known. Sadly, the vast majority of them had not made preparations for the continuation, transfer or sale of their business in the event of their sudden death or incapacitation. This left their usually unprepared spouse or heirs to decide what to do with the bail agency. It has not always ended successfully.

Whether a sole proprietorship, partnership or corporation, proper plans should be in place to make sure the wishes of the owner are followed and the value of the business is protected. All agency owners should have a succession plan consisting of a will and other business agreements that will guide the continuation, sale or closing of their business. Not having these documents can result in great expense to the estate and sometimes the loss of the business and all of its assets. Agency owners should consult with a tax and estate planning attorney in order to implement proper planning. Do not forget to include the ultimate disposition of all Build Up Funds in the plans. Proper advanced planning may avoid probate by the court and be much less expensive for the estate.

Equally important as tax and estate planning is what I call the “What if I die tomorrow?” concept. Upon the sudden death or incapacitation of an agent, could a stranger walk in and take over the business? If not, big trouble lies ahead. A family member, General Agent or surety that is suddenly required to step in and “run off” an agent’s liability can be at a great disadvantage. If during the course of operating the business the owner did not keep complete, accurate, up to date and understandable records, it is almost impossible for even an experienced bail person to successfully and inexpensively close out cases. Incomplete and unsigned applications and collateral documents are of little help. As I told one agent who grumbled about completing paperwork, “YOU not completing the paperwork because YOU know the people doesn’t help a stranger if YOU die tomorrow”. He got the point.

Unfortunately, I have seen six figure Build Up Funds disappear because the General Agent and surety had to spend massive amounts of time and money trying to locate defendants and indemnitors who were known by the agency owner but were strangers to those trying to manage the business. The owner may know who Grandma Smith’s neighbor’s nephew’s girlfriend is, but without complete and accurate records no one else will know. Also, that indecipherable signature at the bottom of a blank indemnity agreement or promissory note isn’t going to get any money back into the estate if a forfeiture has to be paid.

Some agents may have family members who work in the business or are at least familiar with the operation of the business. Those individuals probably could take over the business and continue to run it successfully provided they are empowered to and have adequate records to work from. This can ensure the family or heirs continue to benefit from what the agent worked so hard to build. Even so, it is still important that a succession plan is in place to facilitate the management of the business. It is possible that something as simple as a durable family power of attorney can greatly assist in maintaining a smooth, profitable operation.

What about licenses and other statutory requirements? Those cannot be left in a will. Some states require that bail agencies must be owned and operated by properly licensed agents. Others restrict ownership by corporations, trusts and certain classes of individuals such as felons. Grace periods for new owners or heirs to meet statutory requirements may be available. Check state regulations for more information regarding agency ownership and operation.

The saddest thing that can happen when an agency owner dies or can no longer run their business is for that business to close due to poor or non-existent planning. Most bail agencies provide excellent income to the owner and their family. Usually the family will find it difficult or impossible to match the revenue generated by the bail agency. By conducting their business with the “What if I die tomorrow?” concept in mind, agency owners can be assured that in the event of tragedy their business can survive to provide for their families.