Legal Matters®

Business
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When life throws curveballs: Business succession through death or disability

Business owners thrive on resilience. They weather market storms, adapt to shifting trends, and tackle challenges head-on. But what happens when life throws a curveball you weren't expecting?

Preparing your business for death or disability isn't a pessimistic exercise — it's a proactive safety net, designed to protect you, your family, and the business.

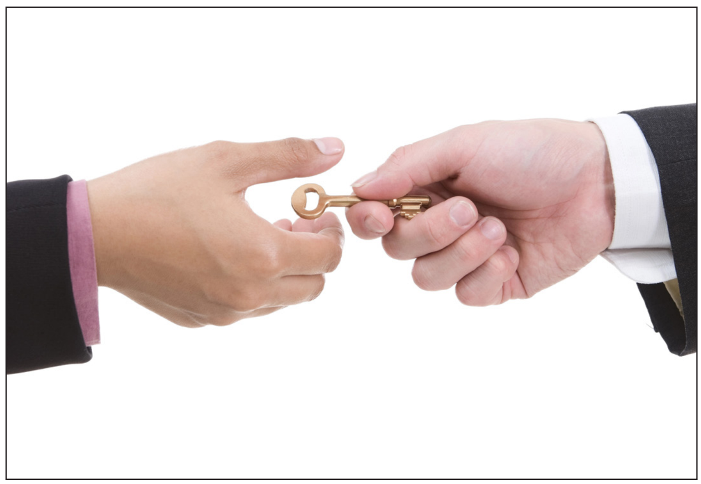
Incapacitated, with no successor

If a business owner becomes incapacitated without having designated a clear successor or legal authority, the situation can become complicated and contentious. Your spouse or other family members may find themselves at sea, struggling with unfamiliar business concerns while grappling with the serious change in your health.

- **Legal uncertainty:** Differing parties, including family members, partners, or even creditors, might claim authority, leading to legal disputes and delays. Existing contracts could be jeopardized, causing financial losses and erosion of business value.
- **Legal intervention:** Depending on the owner's capacity, a court might appoint a guardian or conservator to manage the business. Potential problems here are manifest. This process can be costly, and the conservator may not be someone you would have chosen yourself. What's more, conservator reports to the court become public record, eliminating financial privacy.

Death, with a business partner

Even if you have a business partner, your death or disability could have a devastating impact on the business. Ideally, you already have a buy-sell agreement in place, outlining the financial and legal steps involved in transferring ownership and ensuring the business survives and thrives beyond such a loss. This agreement protects both the deceased partner's estate and the surviving partner's ability to manage the business going forward.



While a buy-sell agreement outlines the legal pathway for ownership transfer, the financial muscle behind the purchase often comes from life insurance. Typically, you'd get a policy on your partner's life, and vice versa. The payout becomes the funding you need to buy out the deceased's heirs.

Problems can arise, however, if the buy-sell agreement and life insur-

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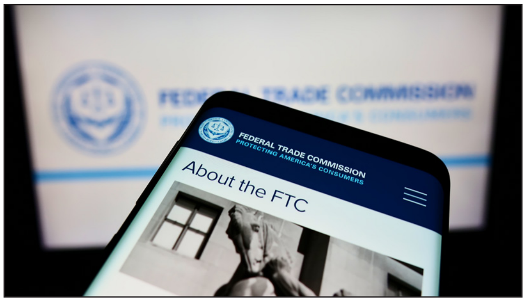
MAHDAVI BACON HALFHILL & YOUNG, PLLC
11350 Random Hills Road, Suite 700 | Fairfax, VA 22030
(703) 352-1300 | admin@mbhylaw.com | www.mbhylaw.com

FTC takes aim at junk fees, online privacy, deceptive car sales

The Federal Trade Commission (FTC) is making a three-pronged attack to strengthen consumer protections, with one finalized rule and two proposals aimed at safeguarding consumer wallets and online privacy.

Here's what's happening and how it could reshape the consumer landscape:



Proposed junk fee rule

The FTC has proposed a rule to prohibit so-called "junk fees," specifically hidden fees that are not revealed until the customer is well into a transaction. The rule would prohibit businesses from advertising prices that omit mandatory fees, including those related to goods or services provided by a third party.

The rule could eliminate automatic gratuity fees added to a restaurant bill for large parties. It could also require ticket outlets and hotels to display the total booking price in the upfront cost – no more surprise cleaning, report, or service fees.

Proposed changes to COPPA rule

The FTC proposed changes to the Children's Online Privacy Protection (COPPA) Rule to further restrict companies' ability to collect, use, and monetize children's personal data. The rule applies to certain websites and online services that knowingly collect information from children under 13.

The changes would require parental opt-in consent for targeted ads, put limits on nudges that encourage children to use an online service, restrict the commercial use of student data, limit data retention, and strengthen data security requirements.

New rule targeting vehicle shopping scams

The FTC finalized its Combating Auto Retail Scams (CARS) rule to prohibit bait-and-switch tactics and junk fees by auto dealers.

According to an FTC announcement, the rule aims to save car buyers nationwide over $3.4 billion per year. It also includes specific protections for military service members.

The CARS rule prohibits dealers from using misinformation to lure vehicle buyers to the lot, including misleading information about the cost of a car or financing terms, the availability of any discounts or rebates, and the actual availability of the vehicles being advertised. It also tackles hidden junk fees – charges buried in lengthy contracts that consumers never agreed to pay.

In addition, the rule:

- Prohibits misrepresentations about price and financing.
- Requires dealers to be upfront in advertising about the actual price a consumer can pay and inform consumers when add-ons are optional.
- Prohibits the dealer from charging for add-ons that provide no benefit to the consumer.
- Requires dealers to get a consumer's "express informed consent" for any charges.

The rule doesn't just offer general consumer protection; it specifically safeguards service members from predatory practices when buying or leasing a car. According to the FTC, service members have an average of twice as much auto debt as civilians. In addition to the protections above, the CARS rule:

- Prohibits dealers from making false claims of military or government affiliation.
- Strengthens existing laws against repossession of a vehicle while the owner is on active duty.
- Requires dealers to be upfront about any restrictions on moving a car out of state, including financing or warranty limitations.

The rule takes effect on July 30, 2024. However, two trade groups have filed challenges in court. The National Automobile Dealers Association (NADA) and the Texas Automobile Dealers Association (TADA) have asked the U.S. 5th Circuit Court of Appeals to vacate or modify the rule or stay its enforcement.

The petitioners characterize the rule as "arbitrary, capricious" and "an abuse of discretion." In a press release, the NADA said the rule will "needlessly lengthen the car sales process by forcing new layers of disclosures and complexity into the transaction."

They assert the rule is duplicative and in some cases conflicts with existing state and federal laws. They also argue the new recordkeeping requirements would be burdensome for small businesses.

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Corporate Transparency Act reporting takes effect

As a reminder to small business owners, new federal reporting requirements under the Corporate Transparency Act (CTA) took effect on January 1, 2024. Nearly every U.S. business entity, including LLCs, will be required to report ownership details to the Financial Crimes Enforcement Network (FinCEN) within one year. The reporting portal is now open at fincen.gov/boi.

Who must comply?

The CTA affects over 30 million small businesses that are either incorporated or registered to do business in any U.S. state or jurisdiction. Certain exempt entities include SEC-reporting public companies, regulated financial institutions, insurance companies, and tax-exempt non-profits.

What information is required?

Affected companies must file a Beneficial Ownership Information Report (BOIR) that provides:

- Entity details, including legal name, address, and tax ID number.
- Information on each beneficial owner — any individual who either directly or indirectly owns 25%+ or exercises substantial control over the entity. Required details include full legal name, birthdate, current residential address, and identification details (e.g., password or state-issued ID).

Reporting companies formed before January 1, 2024, will have a year to submit their BOIR. However, any companies formed on or after that date have just 90 days to file. Additionally, businesses must keep their beneficial ownership information up-to-date and file an amended report within 30 days of any changes.

Be aware that FinCEN recently issued a notice about fraudulent compliance notices asking recipients to click suspicious links regarding CTA reporting.

FinCEN is not mailing such notices. As always, be wary of clicking links or scanning QR codes unless you have verified the message is coming from a trusted source.

Tips for streamlined compliance

- Identify all beneficial owners now using the "substantial control" criteria (e.g., senior officers, important decision-making authority) at fincen.gov/boi.
- Collect required identifying details and documentation early.
- Consult advisors with questions on complex ownership structures.
- Congress may act and delay filing deadlines, but for now treat the above deadlines as firm and plan accordingly. Start preparing now to file complete and accurate beneficial ownership information on time. Penalties from $500 up to $10,000 per day could be assessed for failure to comply.

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ance policies aren't kept up to date over the years. It's not uncommon for business owners to let these agreements sit for a decade or more, even as stakeholders change and business value grows.

- **Life insurance shortfall:** Let's look at two business partners, Joe and Linda. When they started their business, they each got life insurance of $2 million designed to buy out their partner's heirs in the event of a tragedy. But that was fifteen years ago, and now the business is worth $8 million.

  If Linda passes away unexpectedly, Joe is looking at a $2 million shortfall to pay Linda's family their fair share. He might need to borrow money or sell part of the company to come up with the funds the life insurance didn't cover. That could hurt the whole business going forward, limiting growth and reinvestment.
- **Valuation disagreements:** Of course, the scenario above assumes all parties agree the business is worth $8 million. Unfortunately, valuation disputes can also occur in these situations, leading to conflict and sometimes legal battles.

It's a good idea to get an estimate of value on your business every few years. That establishes a basis that both partners agree upon and helps ensure that you can keep those life insurance policies in line with current risk.

Planning for the unthinkable

Unexpected illness and accidents do happen. These are not easy things to think about, but making plans helps ensure your business, and all the families that depend on it, will be okay.

Work with counsel to put good back-up plans on paper now. Think about who you'd want making decisions if you got sick. And if you have partners, make sure you'll have the money to compensate each other's families if one of you should pass away.

MAHDAVI
BACON
HALFHILL &
YOUNG, PLLC
ATTORNEYS AT LAW

11350 Random Hills Road, Suite 700 | Fairfax, VA 22030
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Bill proposes grants for communities hurt by unfair trade

A new bipartisan bill introduced by Sens. Tammy Baldwin (D-WI) and Bill Cassidy (R-LA) aims to provide financial support to communities negatively impacted by foreign trade practices.

Dubbed the "Resilient Communities Act," the legislation would establish a Commerce Department program to distribute grants to local governments representing areas facing economic decline due to foreign dumping or subsidies. The grants would fund projects to encourage domestic manufacturing growth and employment, or general economic development initiatives.

Grants would come from an existing revenue stream, using import duties levied against foreign companies who utilize unfair pricing strategies. Baldwin and Cassidy pointed specifically to harm caused to American companies from dumped or subsidized Chinese imports.

Under the proposed bill, grants could be used for various economic purposes, like infrastructure investments, healthcare access improvements, environmental compliance, broadband expansion and more. Communities with idled factories or significant job losses from import competition would receive priority.

The bill comes as American industries from steel and aluminum to seafood have suffered from foreign dumping practices. Supporters say it represents a sensible way to reinvest unfair trading penalties back into affected areas, helping diversify local economies against trade shocks.

The bill is supported by the United Steelworkers, the Alliance for American Manufacturing, and the American Shrimp Processors Association.

Critics, however, say the Resilient Communities Act too closely resembles the so-called "Byrd Amendment" from 2000, which was successfully challenged at the World Trade Organization (WTO). That law distributed import tariff revenue directly to companies impacted by foreign dumping and subsidies.