

# A RED FILE: PUTTING A BOW ON TOP OF YOUR ESTATE PLAN

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**MARVIN E. BLUM** is an attorney and CPA based in Fort Worth. He is Board Certified in Estate Planning and Probate Law and is a Fellow of the American College of Trust and Estate Counsel.

Mr. Blum founded The Blum Firm, P.C. over 40 years ago. The firm specializes in estate and tax planning and the related specialties of asset protection, business planning, business succession planning, charitable planning, family legacy planning, fiduciary litigation, and guardianship. The Blum Firm has grown to be one of the premier estate planning firms in the nation, known for creating customized, cutting-edge estate plans for high-net-worth individuals.

Mr. Blum serves on the Editorial Advisory Committee for *Trusts & Estates* magazine. He is Treasurer for the Texas Cultural Trust.

Mr. Blum earned his BBA (Highest Honors) in Accounting from The University of Texas and received his law degree (High Honors) from The University of Texas School of Law.

# A Red File: Putting a Bow on Top of Your Estate Plan

After putting all the elements of the estate plan in place, what's next? The final, and almost always overlooked step, is a Red File. A Red File is a roadmap containing critical information to guide the family through a loved one's incapacity, estate administration, business succession, and creation or continuation of a lasting legacy. The Red File covers the items missing from even the most carefully crafted legal documents, such as key contacts, passwords, caregiving wishes, and heartfelt reflections.

- Statistics:
  - The leading cause of death in the United States is heart disease.
  - For two-thirds of women and half of men who die from heart disease, their first symptom was death—not chest pain, not discomfort in an arm, not shortness of breath.
- People in seemingly excellent health can go quickly and unexpectedly. Imagine you died suddenly or become incapacitated. Do those closest to you have all the information they will need?
- Create a “Red File” for what estate planning documents don’t cover.

# Section 1: Centralized File of Personal Information

- Typically, a spouse, child, or other loved one takes on the role of executor with only part of the instructions they need.
- They may know who is to receive mom's assets, but what exactly did mom own? How many bank accounts did she use? What insurance policies did she have? Was there a safety deposit box? What bills did she owe? How do I access her email or shut down her social media accounts?

## You and Your Family

- ▶ **You**– Full legal name, date and place of birth, copy of birth certificate, location of original birth certificate, copy of Social Security card, location of Social Security card, copy of driver’s license, location of driver’s license
- ▶ **Parents**– Mother’s full name, father’s full name, date and place of mother’s birth, date and place of father’s birth
- ▶ **Children**– Children’s full names, dates of birth, copies of children’s birth certificates, copies of adoption paperwork
- ▶ **Stepchildren**– Full names, dates of birth, how related to you
- ▶ **Grandchildren**– Grandchildren’s full names, dates of birth, parents’ names

- ▶ **Marriages– Spouses’ full names, dates and places of marriages and divorces, copies of marriage certificates, copies of pre-nuptial and post-nuptial agreements, copies of divorce decrees**
- ▶ **Military Service– Branch of military, enlistment and discharge dates, rank at discharge, location of military service record and discharge document (form DD214)**
- ▶ **Contact Information– Phone numbers and addresses for family members and close friends**



## Legal Documents

- ▶ **Financial/Durable Power of Attorney**– Copy of document, location of original document, who has copies, effective now or upon incapacity, who is named (in order)
- ▶ **Medical Power of Attorney**– Copy of document, location of original document, who has copies, who is named (in order)
- ▶ **HIPAA Release**– Copy of document, location of original document, who has copies, who is named
- ▶ **Declaration of Guardianship in Event of Later Incapacity**– Copy of document, location of original document, who has copies, who is named (in order)
- ▶ **Directive to Physicians/Living Will**– Copy of document, location of original document, who has copies
- ▶ **Funeral Arrangements Directive**– Copy of document, location of original document, who has copies

- ▶ **Appointment of Agent to Control Disposition of Remains**– Copy of document, location of original document, who has copies, who is named (in order)
- ▶ **Will**– Copy of document, location of original document, who has copies
- ▶ **Living Trust/Revocable Trust**– Copy of document, location of original document, who has copies
- ▶ **Trusts For Your Benefit**– Copies of trust agreements, contact information for trust officers, contact information for trustees, what trust owns
- ▶ **Trusts You Created**– Copies of trust agreements, contact information for trust officers, contact information for trustees, what trust owns
- ▶ **Disposition of Personal Effects**– Codicil, Trust Addendum, or Memorandum addressing how to distribute personal effects

## Financial

- ▶ **Financial Accounts**– For each checking and savings account, brokerage account, retirement account, annuity: Copy of one statement, contact information for bank/institution, account number, exact name on account, beneficiary designation, signers on the account, online login information, what account is generally used for, what bills are automatically debited from account, what income is direct deposited into account
- ▶ **Credit and Debit Cards**– For each card: Copy of front and back of card, exact name on card, financial account card is linked to (if debit card), copy of one statement (if credit card), what bills are automatically charged to card
- ▶ **Advisors**– Contact information for bankers, investment advisors, financial advisors, attorneys, tax advisors
- ▶ **Financial Statement**– Copy of recent personal financial statement
- ▶ **Tax Returns**– Location of tax returns for past three years, contact information for preparer

## Assets

- ▶ **Real Estate–** Copies of deeds and mortgages, location of original deeds, mortgage information (payment amount, contact information for bank, financial account payment is automatically debited from), information on time shares, contact information for property management companies of rental properties
- ▶ **Business Interests–** List of business interests owned, how owner name is styled, contact information for business manager and/or partners, location of documents (corporate documents, buy-sell agreements, stock purchase agreements, appraisals), copies of promissory notes, what happens to business interests at death
- ▶ **Consolidated List of All Income Sources–** Include source, frequency, amount for all retirement benefits, Social Security, IRAs, annuities, investment dividends, income from rental properties, business income, mineral royalties, trust distributions, disability benefits

- ▶ **Vehicles (Including Boats, Recreational Vehicles, Trailers)– List of all owned (including make, model, year), location of original title, exact owner name on title, information on loans (including payment amount, contact information for bank, financial account payment is automatically debited from)**
- ▶ **Jewelry, Art and Collectibles– List of valuable items including location of each, copies of appraisals**
- ▶ **Bonds– List of bonds and where kept**
- ▶ **Safe Deposit Boxes, Safes, Storage, Locked Areas– For each: Location, location of your key or combination, who else has key or combination, list of contents**
- ▶ **Hidden Assets– Location of any assets hidden within the home your heirs should be aware of including location of any firearms, money hidden in the mattress, etc.**

## Home Utilities and Maintenance

- ▶ **Electricity, Gas, Water, Telephone, Cable Television, Internet, Alarm Monitoring– For each: Copy of one statement, account number, contact information for provider**
- ▶ **House Cleaning, Lawn Care, Landscaping, Pool Maintenance, Pest Control– For each: Contact information for provider, copy of contract**
- ▶ **Home Repair Contacts– For each: Contact information and services used**
- ▶ **Community Association– Contact information, when fees are due and amount**

## Insurance

- ▶ **Homeowner's Insurance**– Copy of policy, policy number, contact information for carrier and agent/broker, coverage information, deductible
- ▶ **Auto Insurance**– Copy of policy, policy number, contact information for carrier and agent/broker, coverage information, deductible
- ▶ **Insurance on Valuables**– For policies on jewelry, art, or other collectibles: Copy of policy, policy number, contact information for carrier and agent/broker, coverage information
- ▶ **Business Insurance**– For each worker's compensation insurance, property insurance, general liability insurance, umbrella policy: Copy of policy, policy number, contact information for carrier and agent/broker, coverage information, deductible
- ▶ **Health Insurance**– For each coverage: Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information, deductible/co-pay information

- ▶ **Long-Term Care Insurance**– Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information
- ▶ **Disability Insurance**– Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information
- ▶ **Dental Insurance**– Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information
- ▶ **Vision Insurance**– Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information
- ▶ **Prescription Drug Coverage**– Copies of policy and insurance card, contact information for insurance company, member/group number, coverage information, deductible/co-pay information
- ▶ **Medicare/Medicaid**– Copy of card, coverage information



- ▶ **Life Insurance on Your Life– For each policy: Copy of policy and beneficiary designation, policy number, contact information for carrier and agent/broker**
- ▶ **Life Insurance Owned on Someone Else’s Life– Copies of policy and beneficiary designation, policy number, contact information for carrier and agent/broker**
- ▶ **Veteran’s Benefits– Copy of Veteran’s Health Identification Card, information on any benefits currently receiving (pension, disability compensation, medical), information on additional benefits available (life insurance, health care, long-term care, rehabilitation, nursing and residential care, burial and memorial benefits), contact information for closest Veterans Affairs regional office**

## Medical

- ▶ **Current Medical Issues**– List of current health issues
- ▶ **Current Health Care Providers**– For each: Name, phone number, area of practice
- ▶ **Medications**– List of current medications including dosage and prescribing physician
- ▶ **Supplements and Vitamins**– List of all supplements and vitamins currently taking
- ▶ **Allergies**– List of all allergies including food and drug allergies
- ▶ **Dietary Restrictions**– List of dietary restrictions that need to be adhered to
- ▶ **Pharmacy**– Phone number and address of pharmacy where prescriptions are filled

- ▶ **Medical Supply Company**– Phone number and address for provider of any medical equipment or supplies used
- ▶ **Medical History**– Detailed medical history including vaccines received, surgeries, hospital stays
- ▶ **Family Medical History**– Information on ancestors’ medical health that would be good for future generations to know about in dealing with their own health issues
- ▶ **Past Medical Records**– Contact information for locations of past hospital stays or surgeries, contact information for former physicians

## Funeral and Burial

- ▶ **Legal Documents**– Indicate if a Funeral Arrangements Directive or Appointment of Agent to Control Disposition of Remains is included with legal documents
- ▶ **Grave Plots Owned**– Location of plots, copy of deed
- ▶ **Funeral Expenses Prepaid**– Contact information for funeral home
- ▶ **Funeral Plans**– If no Funeral Arrangements Directive, indicate burial or cremation preference, religious considerations, any music preference, any scriptures or prayers to include
- ▶ **Notifications**– Contact information for anyone to notify when you die
- ▶ **Obituary**– Information you'd like included in your obituary
- ▶ **Photos**– Digital copies of lifetime photos you'd like shown at your memorial service

## Other

- ▶ **Subscriptions**– List of all club memberships (including country club, gym, Sam’s Club, Costco), airline rewards programs, toll tag accounts, magazine subscriptions and newspaper subscriptions including membership numbers, renewal dates, and contact information for organization
- ▶ **Post Office Box or Offsite Mailbox**– Location, location of your key or combination, who else has key or combination
- ▶ **Online Accounts**– Website, username, and password for all online accounts including email accounts, online banking accounts, social media accounts, online shopping accounts, online entertainment accounts
- ▶ **Computer Logins**– Usernames and passwords to log onto each computer
- ▶ **Mobile Device Locks**– PIN lock for each device

# Section 2: Business Continuity Plan

- Business continuity planning (also called business succession planning) is the number one most neglected area of estate planning.
- The estate plan addresses who will own the business but not who will manage it.
- As baby boomers age, many seem to think they're going to live forever and have done no business succession planning. The problem is even worse for a long-held family business, where owners are more emotionally tied to the business and have a hard time being objective.
- Provide information on management succession to facilitate the transition **when (not if)** you are no longer able to manage your business.

- There are 3 primary choices in the toolbox when thinking about succession planning:
  - Transfer the business to a family member/family members.
  - Sell the business to people within the business.
  - Sell the business to an outside party.



# Keeping It in the Family

- When developing a business succession plan to pass a business down to family members, there are 5 key components of a good plan.
- FIRST, you need to decide the **timing**—when the change in control of the business should happen.
  - It's often best to transfer control while the founder is alive so that he can participate in the process and influence the stakeholders. The founder is the “glue” that keeps everyone together and makes the process a smoother transition.
- SECOND, it's time to **start training the successor**.
  - To groom a successor, the founder needs to shift from being quarterback to coach. The process of having a successor “ride around in the truck” with the founder may take many years, so it's important to start early.

- THIRD, who will **manage** the business?
  - The business needs to run like a business and not like a family. You may have to come to grips with the fact that some children aren't qualified to run the business.
  - Who will be on the Board of Directors? It needs to include someone with hands-on experience in the business world, perhaps with training in management.
  - Who will elect the Directors? If you have only one class of stock and you leave it in equal shares outright to children (some active and some not), this is a recipe for friction. Instead, consider different classes of stock (such as voting and nonvoting or common and preferred).
  - Also consider leaving the stock in trust with a carefully-selected trustee. The trustee needs to be either an objective party or someone who'll do what's best for the well-being of the business. When designing the trust, consider naming an independent (or special) trustee with powers to remove and replace the trustee and powers to make certain amendments if unforeseen events arise.

- FOURTH, a good succession plan needs to provide a **cash flow** for all family members who will own the business.
  - Are there assets that you can divide up and distribute out to the owners? For example, does the company own real estate that can be separated out from the operating business and put in a separate entity, then enter into a long-term lease? This could provide a cash flow for those not employed in the business.
  - Life insurance can provide a cash flow for the children who will not receive a salary from the business.
- FIFTH, provide an **exit strategy** for an owner wishing to sell their share.
  - Explore buy/sell arrangements (ideally funded with life insurance).

# Selling to an Outside Party

- If the decision has been made that the company will be sold, work to position the company to be ready to be bought when you're ready to sell.
- Remedy inefficiencies in the business. **Optimize the value** of the business to maximize the sales price.
- Look at the company through the eyes of a potential buyer:
  - Are the business financials in order?
  - Will key employees and relationships necessary for the business to continue be retained?
  - What are the intangible values of the company (key employees, internal processes, reputation for quality)?

# Tax Planning Before the Sale

- Tax planning before a sale is about minimizing taxes and therefore maximizing the amount of the sales proceeds the family actually gets to keep, after paying income tax and estate tax.
- To minimize estate tax, transfer the business to trusts at a time when it qualifies for the maximum amount of valuation discounts.
- Engage in estate “freeze” planning that freezes the value of the business for estate tax purposes yet allows you to retain access, control, and flexibility.
- Before selling the business, consider transferring the business to a Defective Grantor Trust (“DGT”), Spousal Lifetime Access Trust (“SLAT”), or 678 Trust (also known as a Beneficiary Defective Trust).

## Other Estate Tax Considerations

- For closely-held business owners, the largely illiquid business is often the most valuable asset in the estate. Without proper planning, the business may have to be sold to pay the estate tax. The client may have intended for the business to stay in the family but didn't put a plan in place for that to be possible.
- A Section 6166 long-term payout of estate tax is just putting off the problem.
- Even if the client is currently under the federal estate tax exemption level, many are growing their estates and their net worth will exceed the exemption level at death.
- Are you sure you know how the IRS will value the business? It can be difficult to determine the value of a closely-held business. The client may believe his estate is below the estate tax exemption level, but the IRS may not.

### For Each Business Managed With a Succession Plan in Place

- ▶ **Contact Information**– Whom family should contact for information on the succession plan
- ▶ **Company Documents**– Location of any buy-sell agreements or stock purchase agreements
- ▶ **Ownership**– How the company’s ownership will be structured
- ▶ **Management**– How the company’s management will be handled

### For Each Business Managed Without a Succession Plan

- ▶ **Contact Information**– Contact information for all business partners, employees, advisors
- ▶ **Emergency Instructions**– Any information that will be immediately needed
- ▶ **Company Documents**– Location of all company documents including buy-sell agreements, stock purchase agreements, appraisals, promissory notes
- ▶ **Management**– Who should fill which roles in the company

# Section 3: Plan for Incapacity



- Create a plan in case of incapacity, including guidance for future care, preferences, and a clear expression of financial intentions.
- Clients typically don't make preparations for the possibility of becoming incapacitated. In many instances, clients may actually be more willing to discuss preparations for their death than the possibility of incapacitation. This may be because the term "incapacitated" often invokes images of nursing homes and hospital beds. In reality, incapacitation most often comes in the form of cognitive deterioration.
- Many individuals assume a family member will take care of them in the event of incapacity, but few appreciate the number of decisions a guardian or caretaker must make on behalf of an incapacitated person. From housing situations to medical treatment to simple living and eating preferences, without guidance, a family member is left to simply guess at what their loved one wanted.

## Care Provider

- ▶ Do you prefer to live at home with home health care attendants or with a family member? If with a family member, who?
- ▶ Is there an adult day care program available that you would be okay going to?
- ▶ If you can't be cared for in a home environment, which long-term care facilities do you prefer?
- ▶ If the above-named facilities cannot be used, would you prefer that facilities with a particular affiliation or close to a particular person be given preference?
- ▶ If you don't have children who can guide your care, who will implement your wishes for care during your remaining lifetime?

## Personal Preferences

- ▶ **Spiritual or Religious Advisors**– Contact information for any spiritual or religious advisors you would like to continue to minister to you to the extent possible
- ▶ **Spiritual Preferences**– Any faith traditions or religious observances you want to continue
- ▶ **Favorite Things**– List of favorite foods, music, books, movies, television programs, activities, sports, colors
- ▶ **Friends to Update**– List of any people you would like kept informed as to your wellbeing including contact information, list of anyone you expressly want to not have access to you
- ▶ **Palliative Care & Hospice**– Your wishes regarding quality-of-life issues that occur during the course of a serious illness

## Expression of Financial Intentions

- ▶ If you prefer to live at home with a family member, do you want a portion of your assets to be used to remodel the home (enlarge doorways to accommodate a wheelchair, handrails in the restroom, ramps instead of stairs, a bedroom that could accommodate a hospital bed) or to purchase a larger home? If so, how much? Will this be considered a gift or an advance against a future inheritance?
- ▶ Do you want to provide financial support to a family member or close friend who takes on the role of caregiver? If so, will this be considered compensation or a gift?

# Section 4: Legacy Plan

- Aside from money or assets, **what do you want to leave behind?** A Red File can help you gather information about the legacy you want to leave behind—aside from money or assets.
- Sheltering at home with family during the pandemic made many of us acutely aware of any communication issues or family dynamics/dysfunction.
- The recent increase in the use of video-conferencing services (such as Zoom) has shown us there is no need to put off having the first family meeting until everyone can be in the same room.

## Philanthropy and Gifting

- ▶ Do you have any outstanding charitable pledges?
- ▶ Are there any causes you support that you would like to continue to be supported?
- ▶ Do you have any ongoing gifting plans?

## Family History and Culture

- ▶ Ancestors– History of family including names and hometowns of ancestors
- ▶ Accomplishments– List of family accomplishments
- ▶ Traditions– Traditions you want future generations to continue
- ▶ Values– Family’s core values and mission statement
- ▶ Legacy Letter– (Also known as an ethical will) written to future generations to communicate what you value most in life, your best memories and fondest moments, what you want for your descendants’ lives, wisdom you want to share

## Include a FAST (Family Advancement Sustainability Trust)

- We have all witnessed the disaster when an inheritance passes into unprepared hands.
- While the process of estate planning continues to focus on technical factors (tax, asset protection, etc.), there is an evolving call to add to that planning model a focus on clients' qualitative goals and the need to not only prepare the estate for the heirs but to also prepare the heirs to responsibly receive, manage, maintain, and pass on the estate.
- In a nutshell, a FAST (Family Advancement Sustainability Trust) does two things:
  - It is funded with assets that will be used to pay for family enrichment and family education activities such as family retreats, family travel, and preserving the family's heritage, as well as maintaining legacy real estate assets the family wants to pass down to future generations.
  - The FAST appoints trustees/committees who are paid to do the legwork in planning these activities and making sure they happen.



And Finally...

- Most importantly, once you've created your Red File with all of this information, **tell someone where it's kept.**
- Be sure to update it periodically.
- Download a copy of our Red File Checklist: [www.theblumfirm.com/2023/Red-File-Checklist.pdf](http://www.theblumfirm.com/2023/Red-File-Checklist.pdf)

# Questions?

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