



## PRESENTS **An interview with David Greco** **[“Protecting Your Business and Family From Probate”](#)**

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### **Bill Black (Commercial):**

Hi everyone, it's Bill Black, The Exit Coach from The Exit Coach Radio Show. One of the biggest questions I get on this show is, what exactly goes into a business exit plan and when should I start creating mine. Well, I always tell people that the best time to start was five years ago, but the next best time is now because you never know when you might need it. So, we put together a free report that describes what an exit plan is and what you should know. You can get it free by texting “exitplan” with no spaces to 44222 or click [here](#).

### **Announcer (00:31):**

Welcome to the exit coach radio show the show for baby boomer business owners who are looking for cutting edge information as they plan their three to 10 year business succession and exit. Every week we interview top professional advisors for their best tips, strategies, and precautions. So you can be well planned. And now here's your host, the exit coach, Bill black.

### **Bill Black (00:57):**

Thanks for listening. Pleasure to have you with me. My next guest is David Greco. He's an attorney with RMO LLP. He runs the firm's San Diego office. He litigates, among other things, trust and estate disputes, and he's here today to talk about what business owners should be doing to protect their business should the unthinkable happened before they retire or sell their company. Things happen, hey, let's talk about it. David, thanks so much for joining me.

### **David Greco (01:25):**

Yeah. Thanks, Bill, for having me. I really appreciate it.

### **Bill Black (01:29):**

My pleasure. This area of the law can be sometimes very frustrating for people who have things happen and they need to go and work things out. I personally have had a friend who died several years ago,

unplanned, and it was a big mess, a lot of work to do to get things back to normal. So tell us about you and your background and how you got into this area of the law.

**David Greco** ([02:02](#)):

Yeah, I've been in all areas of the litigation sphere throughout my career, but by happenstance ended up picking up a lot of trust and estate work, and now my firm RMO, where I am, we are primarily a trust and estate litigation firms, so it was a good fit. And within that sphere, I've picked up a niche of dealing with business owners and the way that they manage their businesses through the use of trusts, the disputes that arise out of that, and then of course, the sad circumstance where a business owner dies too soon and hasn't planned adequately for what's going to happen to their business after they die. And so we end up in court determining what the business's assets are going to do, who's going to get control of the company, and that kind of a thing. And it becomes even more complex when you are a co-owner of a business and you die and your co-owner, more often than not, the decedent does not really think through the fact that their spouse probably doesn't want to run the business, but if they haven't taken the time to put together a comprehensive estate plan, that's the default, and so it becomes a real big problem.

**Bill Black** ([03:21](#)):

You know, things happen, people die, people become disabled. The world carries on for most people. The problem with the business owner, in particular, that I found is that, that doesn't mean that the business takes a month off, so you can get it all together. In the situation that I was in, the owner died suddenly, the spouse and key employee tried to work things out, things got ugly, and they didn't have some of these basic things - the things that I would call the five most important documents you should have in your vault. The first of those was a living trust or some type of a mechanism to transfer or hold the assets so they could easily be transferred. And the second was a buy, sell agreement. So those are two of the things that we've talked about a little bit that you mentioned. What happens when a business owner doesn't have the right estate plan prepared and they die?

**David Greco** ([04:25](#)):

You know, if you don't have an estate plan, you don't have a trust, you don't have a buy sell agreement - and I want to add one more thing to your list - you don't have death and disability insurance to fund the buy sell agreement, right? It may be that you have a buy sell agreement, but if there's no money that's gonna pay out, then the buy sell agreement can't be effectuated. But you know, to go back to your question, what I've seen happen, almost always I think maybe only in one case, did this not happen, is that the family, the business employees, the executives, all of them have some position or another on what needs to happen to the business and they spend their money and the company's money fighting it out in probate court, and because of the way, particularly in California, the laws are written, even the corporate structure can affect what types of disputes the probate court can and can't hear, what rights family members do and don't have.

**David Greco** ([05:29](#)):

So if you have an LLC, there's only certain rights that beneficiaries have to the company, if you have an S Corp that's different. So more often than not, and in fact, in the case I've got right now, all of the

resources go to fighting it out in court about who's going to get the business, and then the business winds down within a year, because it can't afford to keep functioning. Not only because it's lost its leader, so to speak, but because all the money's been funneled into the attorneys in the courts. And hey, look, that's great for me, that's how I make my money. But for folks who don't want their families to go through years of litigation, just to lose the family business, they need to get their act together now.

**Bill Black (06:13):**

Yeah, in the situation I was in, the saddest thing about all of it was the the widow didn't really have a moment to grieve. She was determined to keep her husband's name honorable and try to fix the business, and try to get it ready and we were trying to get it ready for sale or transfer it to key people. So many things were happening, it was bewildering. And again, while all that's happening, the business orders keep coming in and the business has to keep doing business and key employees are wondering what's going to happen. It just was a huge mess. So yeah, you mentioned besides the estate plan and the buy, sell agreement, death and disability insurance, I had another one in my list, and that was something that indicates that the widow, the family of the owner could continue to receive income because payday is coming, you know? And so a salary continuation agreement of some type. Can you talk about that?

**David Greco (07:26):**

Yeah. You know that's a good point, and it, again, kind of depends on the structure of the company. And it also depends on how involved the owner is with the day-to-day operation. So this is a situation where if a closely held business or the owner is the one running payroll, maybe they only have 10 employees, becomes a big problem. If nobody else is a signer on those checks. So getting some plans in place and contingency orders where if the owner is incapacitated, that somebody else can just run payroll, really will help your employees. And then a lot of these folks are family businesses. And so it helps your family by allowing them to collect the paycheck that they depended on you for.

**Bill Black (08:13):**

And I'll add one more dimension in this situation, the owner was the only signer on a line of credit. His wife wasn't included in the signatory line and guess what the bank did within a couple of days of learning he passed away - they called the line of credit. It was one of those nightmare situations. It was really, really terrible. So a lot of things can happen. How can family members of a business member who has passed away protect their interests without wasting the company's money during the probate process?

**David Greco (08:47):**

Yeah. You know, the biggest thing that people need to understand is that there's a lot of emotion in probate, right? Somebody has died, you have lost a family member. And on the other side of the dispute, if it's a business owner, sometimes it's a co-owner who, yeah, they're probably sad, their co-business owner is dead, but they also want to continue running the business, and they're heavily invested in that because it is their livelihood. So people let their emotions get the better of them and that's where a lot of money is wasted. So the thing that people really should do is either enter an arbitration agreement before you die. If there's a dispute about where the business path is, go to an

arbitrator, which is faster, and more efficient, and more final than going through a court proceeding. And if you don't have an arbitration agreement, if your deceased spouse or whoever the business owner is, wasn't smart enough to get that in place, then you've got to try to get to a mediator - and that's a private party who can help the parties negotiate a settlement outside the courts. Nobody's going to be completely happy, but at the end of the day, you're going to save hundreds of thousands of dollars in attorney's fees and years of your life if you can sit down with a third party and help them, help you work it out.

**Bill Black** ([10:09](#)):

Great tips. Now, a lot of people hear that probate is not only an expensive proposition, but it takes a lot of time. What's the current status with the courts, having been closed down for a while and everything? How long does it typically take to get through a probate process?

**David Greco** ([10:30](#)):

You know, a typical probate process in a normal world, where we're not in a pandemic, it can be a year or more just to get the administrator and the estate appointed. And then, depending on the level of authority that the court gives to the administrator, you might have to go back every time we want to make a major move. More often than not, you have to sell a home after somebody passes away. That requires court approval a lot of the time, and you just have to be put in line for your hearing. So in a normal world, it's a year, and now that we're under the situations we're in, the courts were closed from March basically until July. Some of them opened a little bit early. Some of them opened for partial functionality, but they are still working through the backlog of those cases.

**David Greco** ([11:22](#)):

One figure that I heard was this, the San Diego courts alone - and this is not just probate - the San Diego courts total had 47,000 hearings and items that they had to put back on calendar, whether that was a status conference, a motion hearing. So imagine the courts trying to keep up with what they have now, let alone all those 47,000 things they've been backed up with. So what we've been telling all clients right now, is that you're not going to get a trial in the year 2020. You might not even get a trial in the year 2021. So, the best thing to do is, again, get to a mediator, try to get this resolved privately and quickly, because if you wait for the courts, you're going to be waiting a very, very long time.

**Bill Black** ([12:20](#)):

What would you say some of the biggest causes for probate dragging out would be? What can they do to prepare so that maybe it can get resolved? Cause that's what I've heard is, maybe you can comment on this, but that one of the reasons it takes so long is people go in and they're not prepared, or there are outstanding issues that need to be brought up, and then you get put back to the bottom of the pile and wait again.

**David Greco** ([12:44](#)):

Exactly. That's exactly right. And it comes back down to, get a good estate plan in place, get a trust. The thing about trusts is that they can be administered outside of the court. So, you pass away with the trust and the trust is written in a sufficient way, and nobody challenges it. You know, you can run the trust

without filing any documents in court. It really drags out when you have to wait in line at court when somebody contests the trust, or a will, because then you've got to wait for a court hearing, you've got to wait for court decisions, and that's to say nothing of going all the way through the process and then having somebody - because you went to trial, that doesn't mean the case is over - somebody can file an appeal. It's a matter of right. They can absolutely do that.

**David Greco (13:33):**

It's not discretionary. And those appeals themselves take a year or two sometimes to resolve as well. But to answer your question, you've got to get a good trust, you've got to get a good pour over will into your trust, and you've got to keep it updated. If you let your trust go unedited for 20 years, there's going to be a problem because, no doubt that trust from 20 years ago did not correctly itemize the property that you have now. Maybe you've had a kid in between then and now, maybe a kid you didn't know you had popped up between then and now, and you've got to make sure that you either are going to give money to that person or you're not. So I kind of like to recommend that folks check on their estate plan just once a year, maybe every summer you just take a look at your will, take a look at your trust. Have we done anything in the past year that's really going to change the way that we need to distribute our assets or our business?

**Bill Black (14:31):**

Yeah, I think this is in your area of expertise, but with regards to buy sell agreements, you handle disputes with buy sell agreements as well?

**David Greco (14:44):**

That's right. Yeah, and so sometimes those buy sell agreements end up in the probate court. Again, it depends on the structure of the company and the way the agreement is written, but we handle them regardless of if they're in probate court or in the civil court. If there's a buy sell agreement and there's a dispute over it, that is within our wheelhouse.

**Bill Black (15:05):**

Yeah. What I've found is, a lot of buy sell agreements that people get, maybe they got it through an online service or stationary store or whatever, maybe an insurance agent provided it to them, and they don't go deep enough on certain areas, such as how to value the business at the time of a triggering event. Can you comment on that for a moment for our listeners?

**David Greco (15:32):**

Yeah, absolutely. I mean, I can tell you that I won't even, as an attorney myself, draft my own contracts. I'm not a transactional attorney, and even though I'm licensed, I've been practicing law for many years, it's not in my wheelhouse. So, to trust something like Legal Zoom, or one of those template programs, it's really not a smart move. I actually just sold my interest in a separate company that I owned outside my law practice, and my business partner, who is also a licensed attorney, initially told me, she said, "I don't think we need to get lawyers involved, let's just write the contract ourselves," and I said, "You know, it's not going to be a good thing, right?" We're going to write this contract, but we're not going to know the same things that the transactional attorneys know, that the estate planning attorneys know to

look for. And so, we did end up getting counsel involved and got the transaction effectuated. So, the number one thing is, don't use those template sites basically for anything, unless your estate is so simple, right? Unless you basically own a car and nothing else, you really need an expert's hand to guide you.

**Bill Black (16:47):**

Yes, It's always good advice to consult with good professionals. And one of the things that's great about you, is with your memberships in groups like Provisors, correct? You're in Provisors.

**David Greco (17:04):**

That's right.

**Bill Black (17:04):**

Provisors is a well-networked group of professionals, the reason people go to Provisors is to find out who else is professional out in the community and other areas that you can build a good referral network with. What's your experience been with Provisors as far as, as a resource for your clients, and also as a way to get to know other advisors?

**David Greco (17:30):**

Yeah. You know, I could go on and on about how much I love Provisors and everything that it's done for my clients and for me. You go in and you hope maybe you'll get some business out of it, but the thing that has really been fantastic is, anytime I have a question, anytime need an expert in a certain area, I already know somebody because I met them at a Provisors meeting. And I already like them, because I've talked to them over coffee, we met a few times, we've had a get together outside of the Provisors meetings. And so it's just such a valuable resource. I've got a Rolodex of great people who I know to be good. So my experience in Provisors has been great.

**Bill Black (18:16):**

You're on my Rolodex of people to know if there are disputes, because things happen out there. You know, let's face it, people try their best sometimes, they have good intentions, but they just don't get around to planning. And at that point they need to have someone they can call on that they can rely on to negotiate and get them through this very tricky area of the law. David, I really appreciate you coming on. The website is [RMOLawyers.com](http://RMOLawyers.com). Terrific website, really has a lot of great information in their areas, and they also handle things like financial elder abuse, conservatorships, securities, litigation, and enforcement - a wide variety of issues that they can help you with. David, I really appreciate you coming on to the show. Thanks so much, and I look forward to the next time we speak. I hope the court system gets un-logjammed sooner, rather than later, for you.

**David Greco (19:15):**

Me too, and thanks so much for having me. It's been great.

