SFBBG
Schoenberg | Finkel | Beederman | Bell | Glazer LLC

SENSIBLE SOLUTIONS

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About Our Law Firm

We are comprised of seasoned and dedicated professionals who familiarize themselves with our clients' industries as well as their legal issues. We strive to maintain long-term client relationships by keeping our clients fully informed and respecting their time and business resources.

Legal Practice Areas

- Banking and Creditors' Rights
- Condo-Community Association Representation
- Corporate and Other Business Transactions
- Defamation, Privacy and First Amendment
- Employee Benefits
- Employment Law
- Estate Planning, Probate and Trust Administration
- Health and Fitness Industry
- Independent Sales Representatives
- Intellectual Property Law
- Litigation and Alternative Dispute Resolution
- Matrimonial Mediation
- Mergers, Acquisitions and Business Sales
- Real Estate and Finance
- Real Estate Tax Reduction
- Securities, Futures and Derivatives

Using Estate Planning To Avoid Probate

While every person may have different goals for his or her estate plan, avoiding probate is typically on the top of the list. Other goals may include naming guardians for minor children, minimizing or avoiding estate taxes, identifying specific gifts or beneficiaries, or delaying distributions for young beneficiaries or legatees. Understanding the goals is as equally important as knowing the person's financial situation, which may drive specialty planning.

Why Might Probate Be Undesirable? When a person dies and his or her estate is subject to probate, the estate will incur attorneys' fees, court costs, and other expenses required by state and local rules. After probate is opened, the estate must publish notice to creditors in a local newspaper and send notices to known creditors. The estate may also incur court fees to file annual accountings. Probate can also delay distributions to beneficiaries. Creditors generally have up to six months after receiving notice to file claims, which can postpone access to inherited funds.

Privacy is also a concern. Information about the decedent is disclosed in court filings and becomes part of the public record. This may include the decedent's date of death, last residential address, estimated value of assets, and the names and addresses of a spouse, children, or other heirs. Sometimes, detailed financial information must also be disclosed. If a will contest or creditor dispute arises, additional private information about the decedent and the estate may likewise become publicly accessible.

Why Might Probate Be Desirable? Probate can be beneficial when a decedent leaves significant debts. The probate process generally shortens the time a creditor can make a claim against an estate – generally from two years after death to six months (or less) after notice. Probate also offers a structured process for resolving disputes with creditors, including determining the validity of claims and allocating estate funds when the value of the estate is insufficient to pay all the debts. Therefore, probate can be helpful for a decedent with limited assets and substantial liabilities.

How to Avoid Probate Through Estate Planning. Under current law, probate is required if a decedent passes away with either: (i) real estate in the decedent's name, or (ii) assets totaling more than $150,000 (not including vehicles). 755 ILCS §5/25-1.

There are numerous options to ensure neither prong of the test will be met, such as using revocable or irrevocable trusts, lifetime gifting, "transfer on death" or "pay on death" designations, certain joint ownership mechanisms, land trusts, asset retitling, and more. Determining which devices should be utilized will depend on the type of asset and the facts and circumstances of the owner's particular situation. For example, a married couple may use a "tenancy by the entirety" ownership for their personal residence in Illinois, which avoids probate on the first spouse to die as the surviving spouse will automatically become the sole owner. However, the family of the surviving spouse will face probate on the spouse's death if the home is not transferred into a different titling. Moreover, "tenancy by the entirety" titling may not be an option for rental property, a second home, or out-of-state real estate.

Similarly, ownership of a bank account with a "transfer on death" designation to a parent's child will automatically transfer the account to the named beneficiary upon the parent's death without probate. However, the "transfer on death" designation may not be the best option for the parent, depending on his or her family situation and aggregate assets. Using a revocable trust could provide more complex gifting instructions while still avoiding probate.

When To Contact A Professional. Avoiding probate usually requires a thorough analysis and ongoing monitoring to ensure your estate plan and asset titling are sufficient to avoid both prongs of the test above. When an estate holds multiple assets, each asset should be evaluated to determine the most appropriate ownership and transfer strategy. Unique family dynamics may also require specialty planning to ensure a person's wishes are carried out as intended. For higher-value estates, minimizing potential estate tax liability should also be considered. Effective estate planning also involves a long-term, coordinated approach that accounts for both spouses and future generations. In most situations, an experienced attorney should be consulted to develop and implement strategies tailored to a person's goals and circumstances.

This article is for informational purposes only and does not constitute legal advice. Always consult with a qualified attorney for guidance on your specific situation. For more information, please contact Sandra Mertens at Sandra.Mertens@sfbbg.com or 312-648-2300.

When Independent Contractors Look Like Your Company's Employees: Apparent Agency After Uber

Notable Events:

On April 23, 2026 SFBBG litigation partners Norm Finkel and Adam Hirsch filed a complaint in the Circuit Court of Lake County on behalf of Justin Sandberg and Lindsey Sandberg-Newton against their step-mother Margaret Sandberg. Justin and Lindsey are the children of Cubs Hall of Famer Ryne Sandberg. In the complaint, Justin and Lindsey allege that Margaret went against Ryne's interests by trying to shift control of the trust that manages his name, image, and likeness rights to Margaret, her son, and the family's financial advisor. Justin and Lindsey further allege that such a change would destroy the collaborative arrangement that their father established in writing prior to his death. Margaret has not yet filed a response to the complaint.

SFBBG property tax partner Jason Newton successfully obtained a reduction in the assessed value of a retail property, resulting in approximately $1.4 million in property tax savings over the reassessment cycle. The successful appeal reduced the property's tax burden by nearly 50%, delivering substantial long-term savings for the client.

SFBBG litigation partners Adam Glazer and Jeffrey Heftman secured dismissal with prejudice of a complaint alleging breach of fiduciary duty and violations of ERISA in Garippo v. Skokie Valley Air Control, Inc., et al., filed in the United States District Court for the Northern District of Illinois.

SFBBG litigation partner Adam Maxwell successfully obtained dismissal of a commercial arbitration pending before the American Arbitration Association. The arbitrator held that the claimant, who was not a party to the agreement containing the arbitration provision, could not invoke arbitration based solely on his status as a trust beneficiary and dismissed the arbitration in its entirety for lack of jurisdiction.

Accolades:

SFBBG partner Sandra Mertens has been appointed Secretary of the Illinois State Bar Association's Federal Tax Section Council for the 2026–2027 bar year. She also continues to serve as the Newsletter Editor for the Section, reflecting her ongoing leadership and active involvement in the Illinois legal community.

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Calling someone an independent contractor may define the relationship between a company and a worker, but it does not necessarily define the relationship between a company and a customer. That distinction matters for any business that delivers services through independent contractors. A recent Uber verdict brought the issue into focus.

In February 2026, a federal jury in Dean v. Uber Technologies, Inc., No. 25-cv-4276-PHX-CRB (D. Ariz.), one of the first representative cases tried as part of In re Uber Technologies, Inc., Passenger Sexual Assault Litigation, MDL No. 3084 (N.D. Cal.), awarded $8.5 million to a passenger who alleged she was assaulted by her driver. The striking part of the award was not just the amount, but the path to liability. The jury rejected claims that Uber was directly negligent and that its app was defectively designed. But it still held Uber liable under a theory called "apparent agency."

What Apparent Agency Means

Apparent agency does not depend on whether the worker is technically an employee. A company can be liable for a contractor’s conduct when it holds the contractor out in a way that leads a customer to reasonably believe that the contractor is acting on the company’s behalf and the customer relies on that appearance.

A hospital is a good example. A patient goes to an emergency room, is treated by the physician on duty, and reasonably assumes the care is being provided by the hospital, even if the physician is an independent contractor. Courts in many jurisdictions have recognized that, when the hospital presents the physician as part of its care team and the patient reasonably relies on that presentation, the hospital may be liable under apparent agency principles. The private contract is not dispositive. The focus is on what the hospital presented and what the patient reasonably understood.

Why The Contractor Label Did Not End The Case

Uber has long maintained that it is a technology platform connecting riders with independent drivers, not a transportation company responsible for every driver’s conduct. That argument may matter in some contexts, but the Dean case was not just about worker classification; it was about appearances.

The rider summoned a car through Uber’s app, and Uber matched the rider with a driver. The rider paid through the app, Uber’s platform rules governed the trip, and Uber's branding and safety messaging framed the experience as an Uber ride.

From the passenger’s perspective, this was not a private arrangement with a stranger who happened to use the same software. It was an Uber ride. The jury accepted that apparent agency theory even though it rejected other theories of liability.

Two Questions Businesses Should Ask

For companies using independent contractors, the doctrine comes down to two practical questions.

First, holding out. Does your branding, customer communication, uniform, app, website, signage, or marketing present the contractor’s work as your service? The more seamlessly the contractor is folded into your brand, the stronger the apparent agency argument becomes.

Second, reasonable reliance. Did the customer reasonably believe they were dealing with your company, and did they act on that belief? Safety and quality representations are especially important because they invite reliance. If a company markets a safe, vetted, consistent experience, a customer will argue that those promises shaped the decision to buy, book, ride, or enter a vehicle or other premises.

Neither question is answered by the contractor agreement alone. You can win the classification fight and still face customer-facing tort exposure.

What This Means For Contractor Models

Independent-contractor status remains important. It can affect wage obligations, tax treatment, benefits, control, and other employment-law issues. But it is not a universal liability shield.

The practical step is an apparent agency audit. Look at how contractors appear to the people they serve. Review your branding, website, app flow, uniforms, scripts, invoices, email signatures, and customer-facing promises. If contractors are presented as part of your operation, your contracts, insurance, indemnity provisions, and risk controls should reflect that reality.

Disclaimers can help, but they are not magic words. A buried statement in terms of service may not undo a strong contrary impression created everywhere else.

A Word Of Caution

This is still a developing story. The Uber verdicts are representative outcomes in broader ride share litigation, and Uber has indicated it will appeal adverse rulings. Results have been uneven. A later case produced only a $5,000 award, and different jurisdictions may apply different doctrines.

The broader lesson is still clear: calling someone a contractor is not the same thing as making them look independent to the customer. Where a business builds trust through a unified brand experience, it may also be building liability.

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