

# Estate Planning - For Business Owners

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Cash flow, customers and business development may be typical concerns for most business owners during the working day (and beyond) but death, or rather the affect it can have on the business, may not always feature highly on the business planning agenda. The death of a business owner can potentially have a major impact on the continuation of the business.

## Stephensons

## Estate Planning

### Sole traders

In the event of the death of a sole trader, the Personal Representatives (PRs) of the estate would take over and ultimately sell the business as a going concern. The PRs will either be the Executors named in the Will or, if there is no Will, the relatives entitled to act as PRs under the intestacy rules.

Competing interests of beneficiaries under a Will, or under the intestacy rules, may result in the PRs having to sell the business as soon as possible, especially if there is mounting pressure from beneficiaries to 'cash in' the assets in the estate.

Business succession planning ought really to take into account a Will. A Will can provide the PRs with flexibility when dealing with the business in relation to any other assets there may be in the estate following death. For instance, a Will can specify that the business can be carried on by the PRs and that other assets in the estate can be used to help support the business until an eventual sale.

### Partnerships

Lifetime succession planning in respect of partnerships can be crucial to ensure the surviving partners can effectively carry on with the business. If there is no partnership agreement in place the partnership may simply dissolve on the death of a partner. A partnership agreement can give the surviving partners the ability to purchase a deceased partner's share from the PRs of the estate.

The partnership agreement ought to be carefully drafted so as not to create a binding agreement to sell in the event of death, which could have adverse Inheritance Tax consequences.

### Limited companies

A business will initially continue after the death of a shareholder but its ultimate survival may depend on who then owns the shares and manages the company. The PRs of a deceased shareholder will have to review the articles of association to check whether there is an option to purchase the shares or any pre-emption rights affecting the disposal of shares. If there is an automatic right to purchase the shares, as opposed to an option, Inheritance Tax relief could be lost. Even if there is an option to purchase shares, surviving share holders may not have the resources available leaving the PRs with a holding in a company which they are unable to sell on behalf of the estate.

A cross option agreement can help avoid this problem. This can give PRs an option to sell shares to surviving shareholders and the surviving shareholders the option to purchase and is often used in conjunction with life assurance policies. The shareholders have policies written into trust to pay the proceeds to the surviving shareholders in the event of death so as to provide the funds to offer to purchase the shares from the PRs. This provides a mechanism for the transition of the shares to the surviving business owners to help ensure the continuation of the business.

### Will planning & Inheritance Tax

Certain business interests qualify for Business Property Relief (BPR) from Inheritance Tax on death. For instance, a partnership interest in a trading company owned for two years before death ought to qualify for 100% relief such that the value of the interest is reduced to nil for Inheritance Tax purposes.

It is quite common in circumstances in which a person is married or in a civil partnership that they simply leave all of their estate to their surviving spouse or civil partner in the event of death. If the estate contains business interests this could be wasting the BPR however as assets passing to a spouse or civil partner are exempt from Inheritance Tax anyway.

It may be more tax efficient in the long run to leave the business interests into a trust as an alternative to all the estate passing outright to a surviving spouse or civil partner. The surviving spouse or civil partner can still benefit from the trust during their lifetime but without the underlying value of the trust fund then being included in their own estate in the event of their later death.

Now is the time to plan for the future. Our specialist solicitors can advise on a range of Will writing services for business owners, whether this be for sole traders, partners or shareholders of limited companies. We can also advise on the most suitable business structures to ensure that a business is best placed to deal with such circumstances at a difficult time.

## Working with you, for you

At Stephenson's our clients are real people, and they live and work in the real world - which at times can be an unpredictable place. But whatever it throws at them we're never far away to help. Because we're real people too and we understand our clients needs. Our similarities mean we can work side-by-side to get the best outcome possible. It also means we can tailor our legal costs and services to lots of different circumstances. Ensuring everyone gets the representation and result they deserve for their individual circumstances. Our business is to deliver legal services that work for our clients, so you can trust our specialists to take care of things on your behalf.

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