

Estate Planning for Business Owners

Understanding what will happen to your business when you die is essential for you and the people who depend on it. Your business may be one of your most valuable assets.

What happens to my business if I die?

- **Sole Trader** – Your business is not separate from you as an individual. Any assets used in your business (such as equipment) will go to the beneficiaries of your will or surviving relatives under the rules of intestacy if you do not have a will. You can make a gift of specific assets used in your business if you want a named beneficiary to inherit these.
- **Partnership** – Unless there is a formal partnership agreement in place, your partnership will automatically dissolve on death. Having a partnership agreement enables clarity over what you and your business partner would like to happen to your shares on death and how this should be valued.
- **Limited company** – your business has a legal identity, so it will continue to exist on your death. The articles of association may specify what will happen to the shares of your business. If the articles do not restrict this, you can leave the shares directly to beneficiaries of your will or via a trust. A similar situation applies to Limited Liability Partnerships.

Consider the following situation:



Raj, Clive and Sarah own Print Work Ltd in equal shares.



Sarah dies suddenly. She made a will many years ago before she owned a business. Her husband, Pete, is her sole beneficiary and inherits her shareholding in Print Work Ltd.



Pete needs money quickly following Sarah's death, so he wants to sell the shares. He cannot work as he has two young children to look after. He does not want to be involved in running the business.



Raj and Clive are stressed and worried. The future of their business is in jeopardy. Not only have they lost their top designer, but they also do not have the money to buy Sarah's share from her husband, Pete.

Running the company has become more complex and frustrating as they require Pete's cooperation with any decisions they make. They are worried about who Pete may sell his share in the company to and are also concerned about losing control over a business they have worked hard to build.

It does not have to be this way. By putting a plan in place, you can understand your options, be tax-efficient, and ensure the right protection is in place.

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The benefits of planning

Raj, Clive and Sarah stop and think. They discuss what they would want to happen if one of them dies or becomes incapacitated. They have worked hard to build their business and want peace of mind that all those who depend on it will be protected.

They each make wills and Business LPA's. They also take out shareholder protection and put a cross option agreement in place. These actions would help facilitate the sale of the deceased business owner's share back to the surviving business owners while ensuring the deceased owner's family is financially supported. The business can continue to operate.

Their wills contain Business Property Relief trusts.

- The trust receives the share of the business and can hold proceeds of sale
- If the surviving spouse dies, the value of the trust does not form part of their estate.
- This maximises the amount of Inheritance Tax relief available for future beneficiaries
- The assets in the trust can be used flexibly for a range of beneficiaries (e.g. spouse and children) and protected from third parties (e.g. if there is remarriage, bankruptcy).

Consider:

- Do you have an up-to-date will?
- Who will inherit your business?
- How would this affect your family, surviving business owner/partners, employees?
- Do you have adequate shareholder protection in place?

