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Wills, Trusts & Probate

Leaving your Business in Safe Hands – Your Questions Answered



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There are lots of things to consider while running a business, but very few owners or directors consider what would happen to them in the event of their unexpected death.

While many of us will hope to retire, sell or pass on a business before our death, sometimes this isn't the case, and you must be ready to leave your business in a strong position to continue trading without you while ensuring that your family and other beneficiaries are cared for as well.

To help, we have put together a collection of frequently asked questions to help you understand what would happen in the event of your death and the steps you can take to prepare your business.

Why should business owners have a Will in place?

If you do not have a Will in place then your business could be inherited by someone with no business skills and no interest in running your business, or it could even pass to a number of different people who are unable to agree on its direction or the running of it.

You may already know that your family have no interest in running your business, in which case, a Will can be structured together with related documentation and financial products to produce a cash sum for your family equivalent to the value of the shares (if it is a Ltd).

What happens to my interest in a partnership?

When drafting your Will it is important to check the terms of the partnership agreement, if there is one, as this can affect what happens to your interest on your death. For instance, your partners may have first refusal to purchase your interest in the business from your estate.

What if my business is incorporated?

A company's articles of association will often restrict how shares are to be passed on and it is, therefore, important to review them at the same time as preparing your Will. If you wish to leave shares to a surviving spouse to live off, if it is a minority holding, they may end up with no income and have practically no capital value. We can advise on ways to minimise this. If there are any issues of this sort then it may be possible to amend the articles of association.

Would a trust help?

There are situations where a trust for the partnership interest or shares in a company is written into a Will to provide for a wide range of beneficiaries on the basis that the trustees will then structure the inheritance in light of the circumstances. The lack of certainty, however, is off-putting to some business owners.

Can I pass on my shares or business interests to a family member?

Whether or not you can pass on shares or business interests will depend on the business' partnership agreement or articles of association. If there is a shareholders' agreement, this may have an impact.

“It's important to check these documents before you make a Will or make any promises to an intended recipient.”

You should also think about how involved your family member will want to be in the business before making your Will. This will determine the best way to pass the business on. One option is to set up a trust to hold shares so your family can benefit without being directly involved.

Can I leave instructions on how to run my business?

Someone who inherits shares in a company will have some control over wider issues, but day-to-day decision making of companies or partnerships will stay with the surviving directors or partners.

The best way to influence the future management of your business is to appoint other directors while you're still alive. This is a large part of the succession planning process.

But what happens if one of your children works for the business? How do you treat them? Do you give all your children an equal share or do you try to pass the business to the one who has helped build up the business? This and many other issues arise and need careful thought and professional advice as to what is best in your personal circumstances and how to craft your Will to cater for this.

Can you help with Inheritance Tax?

Passing on a business in your Will can mean that your estate has to pay a substantial amount of Inheritance Tax. In some cases, your executors may even have to sell business assets, shares or interests in order to pay that Inheritance Tax. In other cases, your business interests might be eligible for Inheritance Tax relief.

This means it's important to plan how your estate will manage Inheritance Tax in advance. We can help you make any available tax relief and make sure that your business is passed on as you wish.

We can also advise on restructuring the way the business is held so as to maximise available Inheritance Tax reliefs and exemptions, which could help you to pass the assets on free of tax.

Need assistance putting the right plans in place?

If having read this guide, you would like further advice to ensure your business is in safe hands, no matter what happens, please speak to our experienced team today.

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