

Why it is very important to consider Wills and Powers of Attorney?

We understand you lead very busy lives and often prioritise the growth of your business. For example, you may lack a protective/tax efficient Will and Powers of Attorney.

It's important however, that these matters are prioritised. We encourage you to remember the reasons that you work as hard as you do – to provide for yourself and your family/future generations.

Why do you need a Will?

All individuals should have a Will, otherwise the rules of intestacy will apply, as explained in this popular blog on our website titled [“Who inherits your estate if you die without a valid Will under the rules of intestacy”](#).

However, thinking about what will happen in case of death is never a nice thought, but it is important for your family as well as the business and fellow shareholders.

Key questions are:

- Are there other directors who can take over the management of the business?
- What ultimately happens to their shareholding and does it pass to the appropriate people?

The latter point is particularly important, especially if there are other shareholders of the business who are not in the family.

Example:

Tim and Andy are business partners. They have set up a successful limited business. They are both married with children. Neither of their spouses are involved in the business and would never want to be.

If one of them dies however, they want the value of their shareholding to pass to their respective families. They appreciate however, that their respective spouses would not want to be shareholders and hold the shares long-term, as they're not involved in the business.

Through the use of a shareholder protection insurance policy, a cross option agreement and up to date Wills, both Andy and Tim can have the best of both worlds. The shares can ultimately end up with the surviving shareholder to continue the business, but the cash value of those shares (via the insurance policy) can end up with the surviving spouse/family.

We are highly experienced in preparing the appropriate paperwork for this scenario, alongside financial advisers and accountants.

We suggest you should regularly review your Wills once prepared. Have your circumstances changed since the last Will was prepared? Do you now own different business interests? Have you acquired more business interests? Has your family position changed (divorced, married, remarried)?

Inheritance tax mitigation

You may also regularly miss opportunities to mitigate your inheritance tax position through your Wills and potentially available business relief. This is particularly missed for married couples where one, or both parties, have business interests. Significant inheritance tax savings through their Wills can be made for your children.

Planning in the business owner's lifetime

There are also opportunities to mitigate your tax position. Working together with your accountant and tax advisers, we commonly explore these opportunities with you. For example, transferring some shares in your business to your children outright, or often better, into a trust for your children/grandchildren to benefit in your lifetime.

If you do transfer shares to your children however, it's important to make sure that there are appropriate mechanisms in place to ensure that those shares are not vulnerable if that child dies/has financial difficulties or divorces.

Lasting Powers of Attorney (“LPA”)

As well as up to date tax efficient Wills, we strongly advised to have an LPA in place, at least in respect of your property and financial affairs. An LPA is a legal document which enables an individual to appoint other individuals to manage their affairs if they required assistance or lacked mental capacity in the future. They are a lifetime document, completely separate to a Will.

If an individual loses capacity without having an LPA (or equivalent) in place, no one will be able to deal with the incapacitated shareholder’s shares. The only option to enable someone to deal with that person’s affairs (including their shares), is with a lengthy application for a Deputyship Order to the Court of Protection. If there was a sale ongoing at the time of incapacity, it would have to wait or be restructured. An LPA would avoid these difficulties.

For more details on LPAs please [see here](#).

Conclusion

Everyone should have a Will and an LPA over their property and financial affairs (and health and care). However, for business owners, these matters are even more imperative. Protection of the wealth they’ve built up through their business, as well as tax efficiencies, are key.

We encourage you to take the time to consider these matters with us, so that for the sake of your family and the business left behind upon a death or incapacity, everyone can be adequately provided for.

“When it comes to business succession planning our Corporate and Private Wealth teams work hand in hand to plan and achieve the best outcome for you and your business.”

– Richard Moran, Senior Partner,
Head of Corporate.

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