

Protecting your business

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A business owner who was the sole director of his company passed away suddenly and without a Will, leaving his business without anyone to manage it.

His family were left to wind up the business, but had not been involved in its running so found this a stressful and difficult task. If the business owner had left a Will, he could have included instructions for how his business was to be managed after his death.

Many people have not thought about what happens to their business when they die. Succession planning is an important part of running a business of any size, but is often over-looked.

It is particularly important for people who have a small business, such as sole traders or companies with only one or two directors, where the business may rely on only one person's knowledge, contacts and reputation.

One of the best ways to plan for what happens to your business

after you die is in your Will. You should consider whether you want your business to continue when you are gone, or whether you would want the business to be wound up, and if so what is to happen to the assets of the business.

You could even set out wishes in your Will about who you want to help your executor with the winding up of the business.

If you want your business to continue when you are gone, you will need to think about who will take over running your business, especially if you are a sole trader or the only director.

This could include documents to sit alongside your Will outlining your plans for the business and the direction you hope it will take in the future.

Although these would not be binding, they could help with administration of your estate.

It is important to remember that you cannot leave your role as director to someone else in your Will.

However your Will can and should provide for the transfer of your company shares to an appropriate person, as they will become involved in the administration of the business.

If the business has a



Having a Will detailing what happens to your business is important.

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Shareholder Agreement in place, any wishes in your Will should be consistent.

In another situation, a business owner was left incapacitated through a major accident. Because she was still

alive her Will did not come into effect, but she was unable to run the business herself and it was a tricky and complex job to wind the business up.

You should make provision for how your business will be managed if you become incapacitated. You could appoint an attorney to manage your property affairs through an Enduring Power of Attorney in Relation to Property ("EPOA").

An EPOA allows the Attorney to exercise any powers you could exercise yourself while you have legal capacity, and can continue

to have effect if you no longer have the mental or physical capacity to instruct your Attorney.

The extent of the Attorney's power can be limited and you can revoke your Attorney's power in writing at any time while you are living. The EPOA will cease to operate when you die.

Column courtesy of RAINEY COLLINS LAWYERS phone 0800 783 484 www.raineycollins.co.nz

If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley@raineycollins.co.nz