

the case of professional partnerships, possibly indefinitely.

The Executors can be protected to an extent by advertising the death under the Provisions of Section 27 of the Trustee Act 1925.

With regard to professional indemnity insurance, the Executors should consider renewing this after death.

#### **In Summary**

Those in business (you) should:-

1. Ensure that the business affairs are in order
2. Ensure that the business affairs are up to date with regard to Income Tax, VAT, Health & Safety and insurance, as well as the annual accounts and balance sheet.
3. A Will should be prepared which specifically appoints business Executors who will be willing and able to deal with the business side of the Estate, as distinct from general Executors who will deal with all of the non-business elements of the inheritance.
4. Make sure that Life Insurance is in place to cover business liabilities including loans and overdrafts which may be in existence from time to time and still in existence at the date of death. This is particularly important if the business is a partnership or a company with non-family shareholders and to help with cash flow where money is paid and to the Beneficiaries of the deceased person of the business
5. Check the Articles of Association and Shareholder's Agreement (Company) or Partnership Agreement (Partnership). Where there is no Shareholder's Agreement or Partnership Agreement in place or where the provisions are out of date or inadequate, these should be attended to, paying particular attention to the payment of capital share on death.
6. Inform you Business Executor and/or family of any specific wishes which you might have with regard to the future of the business after death. A private letter left with the Will is useful especially if there is a reluctance to talk about death and the business.

Finally, take all the necessary advice during the running of the business to ensure that the death of the key player does not mean the death of the business.

The information in this briefing note is intended to provide an overview of current or upcoming legislation and is not intended as complete coverage. The application of the law in any specific case should always follow professional advice. If you wish to update the details which we hold on you or you do not wish to receive any further marketing materials from us, please contact us by email - [marketing@smithpartnership.co.uk](mailto:marketing@smithpartnership.co.uk).



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# Death and your business

Wills and Inheritance  
Factsheet



SMITH PARTNERSHIP  
Solicitors

# Will your death mean the death of your business?

## The issues

Being in control of a business with all the knowledge, expertise and experience to run it brings its own responsibilities but by enlarge it works. While things go well there are usually no untoward problems. However, what would happen in the event that you are suddenly no longer around to make the decisions and control the future of the business? What would happen to the business on the death of the key player (you)? Would it carry on or would it need to be wound up? What will your personal representatives (hopefully your Executors appointed in your Will) need to do?

Are your personal representatives (whether your chosen Executors or Administrators appointed under the rules of intestacy) the right people to deal with the business affairs?

What will your personal representatives be required to do? Here are just a few of their duties: -

1. They will need to value the assets of the business. For this they may need outside help but would they know where to go for it?
2. They need to obtain the last set of accounts, a set of accounts up to the date of death and a balance sheet as at the date of death. This would take time but it will take longer for the personal representatives if the business affairs are not in order and are not up to date. The Executors will have time limits in which to do things, e.g. filing tax returns and making tax payments.
3. They will need to keep the business running, possibly for a long time. They will need to keep the business running until a decision is made as to what should happen to the business in the long term, i.e. continuing the business, selling it or winding it up.
4. Being able to continue to operate the business will depend upon its financial status at the date of death. Will the Bank continue to offer an overdraft or extend a loan? Your personal representatives will need to be able to deal with the Bank.
5. They will need to notify the HMRC of the death of the key player and the date which they effectively started running the business if the business is registered for VAT.
6. They will need to file VAT returns and ensure the correct VAT is paid.

## Carrying on the business

There will be other questions which will need to be answered. Is carrying on the business an option for the Executors? What if there is not an option to carry on the business? If the business is a limited company the articles of association may stipulate that the existing members/shareholders have the first call on the deceased's shares. This is something to be aware of and it

would be appropriate to check the articles of association especially when it comes to preparing a Will to appoint Executors to deal with the business. If care is not taken then the end result may be disgruntled Beneficiaries who are only getting a financial payment out of the business instead of stake in the (family) business.

Even where the business is operating on a sole trader basis, the personal representatives have a lot to deal with: -

1. In respect of the trading name, the invoices, headed paper, etc will need to show the Executors as running the business (cost implications)
2. New bank accounts will need to be opened in the name of the Executors.
3. While the TUPE Regulations will ensure that the staff will still be employed by the business, the Executor will need to notify them of the change. The payroll needs to be serviced and PAYE tax and National Insurance to be paid.
4. If the business leases its premises, the landlord will need to be notified and the terms of the lease investigated.
5. Executors are personally liable for Health & Safety issues. They will therefore need to ensure that all provisions are being met and possibly even carry out a risk assessment. Are you up to date with the Health & Safety Regulations?
6. Insurance needs to be transferred into the name of the Executors (this is something which could be easily overlooked with disastrous consequences). If the business is a unique business in any way, then specialist advice may be needed.

## Selling the business

Family members or Beneficiaries in the Will may or may not want to carry on the business. It is important to make sure that the business is specifically referred to in a Will.

There may be good reasons for selling the business soon after death, for example, Capital Gains Tax, especially if the shares in the business have some value.

While the Executors are looking for a buyer then the good will of the business may depreciate if the Executors do not carry on the business, and similarly, the values of the shares may not be worth as much after the date of death. If it is a specialist business, the question needs to be asked as to whether or not there is a market for it.

Is it possible that employees of the business or the other shareholders wish to and are able to purchase the business? What if they are not interested?

While these decisions are being made the clock is still ticking and certain things will not wait, e.g. the completion of Inheritance Tax forms, the payment of wages and the meeting of overheads.

Would competitors be interested in the business? They may be more interested in watching the business fold up to their benefit.

## After the sale

Even after the Executors have sold the business or wound it up, the Executors cannot just sit back thinking the job is finished.

Claims may be made against the business for anytime up to six years after the date of death and, in