



VESTED ESTATES  
LTD

# SUCCESSION PLANNING FOR BUSINESSES



## The importance of Business Succession Planning - and pitfalls of failing to do so!

For business owners there are many legal considerations and obligations. However, the main focus for many is driving returns from the business and this can lead to the old adage of “working in the business, not on it”. At Vested Estates we have a wealth of knowledge in the area of Business Succession planning and our expertise provides peace of mind for many business owners.

An effective succession plan involves going back to basics and re-visiting some of the “Day 1” decisions that we all make when setting up a business. It is easy to underestimate the impact of some of these decisions at the time and re-evaluating them through the succession planning process is paramount. By doing this we can gain an understanding of the current position of the business in the event of the business owners incapacity or death – and the implications quite often come as a surprise!

So, what are the risks of failing to implement a succession plan?

- The eventual outcome for the business will not be in your control.
- The business may not be able to continue and be wound up.
- Sale of the business may be enforced with the proceeds becoming subject to inheritance tax.
- Control of your business may pass to unintended parties.
- Arrangements or options for partners to buy-out shares may not be in place or be affordable.
- Value of the business may be negatively impacted.
- Disputes within family businesses may arise, affecting ongoing family relations.
- A greater tax liability than necessary.

All outcomes we would wish to avoid.

### Topic in brief:

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Why should we implement a plan?

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What may happen without planning?

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Limited companies

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Partnerships

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Sole Traders

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Case study

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## Limited Companies (limited by shares)

As a sole director of a limited company, it is vital to revisit the Articles of Association put in place at the time of incorporation. If, as is often the case, the Standard or Model Articles have been selected, then it is important to understand that, if you were to be incapacitated or pass away, then the company could well be wound up at the end of the administration period, unless further provision had been made. If this does not reflect your wishes, then it would be necessary to implement a Business LPA and consider specifying the Trustees powers to continue business within your Will.

Where a company has multiple directors, the relationship of those directors must be considered – be that spouses, family or business partners. The Articles of Association selected should align with that relationship and, together with the Shareholder Agreement, will provide direction as to what should happen in the event of incapacity or death of a shareholder. In order to achieve these aims, a Cross Option agreement, coupled with either a Relevant Life or Shareholder Protection Policy may provide the best protection for the business and directors beneficiaries.



## Partnerships

For Partnerships, the Partnership Agreement is pivotal – without one a partnership is automatically dissolved on the death of any partner. The remaining partners must then wind up the business and sell the assets - even if there are several other partners who wish to carry on the business. A deceased partner disposes of their share in their Will. However - if the partnership agreement also contains provisions about what happens to a deceased partner's interest, then the terms of the Partnership Agreement will override the provisions of the Will.



## Sole Traders

In the case of Sole trader enterprises, the business is deemed to have died with you. Any business assets enter the sole trader's personal estate on death, increasing the estate value and may become subject to Inheritance Tax.

It is the job of the Executor (or personal representative where no Will is made) is to distribute the assets as per the terms of the Will or laws of Intestacy. In this respect, provisions within the Will, accurate valuations of business assets and choice of Executor are paramount.



## Procter v Proctor Business Succession Planning: A Case of “Is it really Life or Death?”

In this issue the focus of the case study is on Partnerships.

We look at the case of Procter v Procter, which involves a family farming partnership. Whilst in this instance there was a Partnership agreement in place, this was very much a “Day 1” decision and had been implemented many years previously when the partnership had been set up. Fast forward many years, the sister had retired from the partnership and both parents, who were also partners, had passed away.

Upon the passing of her parents the daughter brought a claim against her brothers relating to her entitlement to the partnership, trusts, and the family estate as of the date of her resignation.

The High Court and the Court of Appeal both upheld her claim on the basis that the partnership agreement was outdated and did not contain clear provisions for the current situation.

Without clear provisions for retirement, death, or other changes in the partnership, disputes like this one can arise, leaving partners at the mercy of the default rules in the Partnership Act 1890.

Family dynamics and business conditions can change over time, making it essential to regularly update succession plans. In the Procter case, the outdated partnership agreement contributed to the conflict.

Book your Business Succession review today!

*Thank you for reading!*

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