

## **The Will to Survive: Ensuring a Business survive the death of the owner**

If you think pulling a cow up a tree is difficult, you have not tried persuading a person to write a Will. Everybody is dead sure that it is not his time yet. Take for example those who are about to embark for a vacation somewhere. The thought that their flight may take them to their final destination never crosses their mind. Like it or not, you and I will not be around forever. For those of you who own a business you are faced with the important question of what happens to the business when you are no longer running it. Will it survive?

By having a Will, your loved ones will have you to thank for choosing to make the estate administration process simpler and cheaper to carry out as well as unlocking your shares in a company in the shortest possible time.

More importantly, it gives your business a fighting chance at survival. Businesses may die a natural death upon the demise of a business owner for various reasons. For example, it is not uncommon for businesses to suffer because of family disputes. This problem usually arises because the parties who are staking a claim cannot get along or are not happy with how the business ownership is divided. Bitter quarrels between siblings and in-laws over control and ownership can destroy an otherwise profitable and promising business. By having a Will you would have exercised your rights under the law to appoint your business successor and prevent your business interests from falling into the wrong hands. Thus, family disputes over the ownership of your business or your shares in a business can be avoided.

A business may also have a tough time surviving where there is no qualified successor who is willing or able to take over the helm. Rather than letting the business sink to the bottom due to the poor management of an incompetent successor, it may be better for you to instruct your executor under your Will to sell it after your passing. Thereafter the sales proceeds can be distributed to beneficiaries of your choice. You can then take comfort that your heirs can live comfortably on the proceeds. This is essentially just another form of succession planning.

However, if you want your business to be inherited by a family member, state so in the Will who your successor is. Give clear instructions that it should not be sold! Otherwise your executor may select your business as the property to be liquidated to pay the estate's expenses and debts. It can happen because your executor cannot read your mind. If there are insufficient funds, then specify in your Will what assets other than your business, is to be liquidated.

There are a number of important issues which a business owner must consider when making a Will. One of which is the appointment of a capable executor to manage your business. If you anticipate that your business will form the most significant part of your estate, you may wish to appoint your successor as the executor or one of the executors. Otherwise, it would be advisable to appoint a person who has sufficient knowledge to manage the business (or has the common sense to engage a manager with the necessary experience and skills) whilst the estate is being administered.

Do note that the executor will have significant powers to manage all your properties including your business during the period when your estate is being administered. He

also has the powers of a shareholder including the right to vote for the appointment of directors and to receive dividends. If you die without having made a Will, you will have no say in the choice on who will manage your estate, who may be someone:

- you dislike or distrust; or
- you believe will not act in the interest of your beneficiaries; or
- is incapable of managing your business.

Your business is your life's work. Whether you own a large financial empire or a small family business, succession planning is important. Your company can have a perpetual existence. You can't.

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