

How to Ensure Your Family Inherit Your Business

by Katherine Hawes

Sarah is a freelance designer in her late 30s. She set up her business as a sole trader, with a trading name in place. Unfortunately, several years later, Sarah suffered a heart attack that took her out of her business for over a month. This was a wake-up call for Sarah, who had always been in good health and had never considered what would happen to her business if she wasn't around.

Although not a happy topic, the truth is that, when you have worked hard to build up your business, you want to ensure that when the time comes to transition out of it, the business is passed on in the way that you like, to the people you wish.

Succession planning is a vital part of any business strategy and it's important to address these possibilities early on, rather than waiting for a crisis to happen. The level of succession planning you need to consider will differ mainly due to your chosen type of business structure: a sole trader, partnership, trust, or company.

For sole traders, the greatest threat in succession planning is 'key person risk'. In this type of structure, an individual owns all of the business assets and also takes on all associated risks and liabilities in their own name. As a result, if something happens to the sole trader, the business can suffer a serious setback or even disintegrate.

Usually, the sole trader has a wealth of undocumented valuable knowledge and experience with the business. This is a concern when considering succession, as business owners will probably take this to the grave with them.

The good news is that there are a number of solutions to these issues that can minimise the risk associated with business succession planning:

- **Changing the business structure.**

It is often easier to pass the business on to another person if it has been set up as a trust or company. In addition, there may also be tax benefits in doing this, in circumstances where there is no disposal of assets and the business continues as a going concern.

- **Ensure that you have the right documents in place.**

It's important to develop documentation for all aspects of your business. Therefore, if the unexpected does occur, you or your beneficiaries will be able to make decisions quickly. Key documentation includes:

- Legal documentation which includes instructions on actions to take in emergencies.
- Copies of contracts.
- Accounts and general personal documents of the sole trader that may relate to the business, e.g. their will.

In conclusion, it pays to be prepared for the worst and, with the right planning and structures in place, you can ensure your business and assets are protected.

With over 20 years' legal and business experience, Katherine Hawes is the founder and principle solicitor of New Age Legal Solutions which offers fixed prices legal solutions for businesses. To find out more about her work www.newagelegalsolutions.com.au



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