

How Can I Preserve My Business Assets For My Family?



Without the appropriate business succession strategies -

- ! Your spouse/partner and children may not inherit your share of a business.
- ! Business partners may not be able to buy out the Deceased's share.
- ! The surviving spouse or children may be obliged to take over the running of the business.
- ! The value of the business could depreciate owing to the inexperience of any Beneficiary.
- ! The business may have to be sold and the proceeds become liable to Inheritance Tax.

In Detail

Protecting the family business

Hard work and dedication has meant that you have built up a sound business to benefit you and your family, and naturally you would want to ensure that your loved ones are provided for in the event of your death. So what if the worst should happen and either you, or a business partner were to die?

Who would actually be entitled to this share of the business?

Without a valid Will the Deceased's share would be subject to the Laws of Intestacy and the person who inherits may not be the person you intended.

Would you or your business partner be content to run your business with their surviving spouse or their Beneficiaries?

This could have a major impact on the running of the business, or the value of the business may now go down following the death of such a key person.

Would they even want to be involved with the running of the business?

Many spouses would probably not want to be burdened with the running of a business they may know very little about. For instance, if there are young children to care and provide for then the surviving spouse might prefer to be bought out.

Would you have sufficient funds to purchase the deceased Director's share from his family? Or would the business have to be sold?

If the business is sold by the deceased's Beneficiaries, how would this impact on their estate as their assets increase? How would it also affect the surviving business partner's assets as these too increase? Both parties' estates could be impacted by Inheritance Tax in the future, having now lost any Business Property Relief previously available whilst the company was still trading. With the sale of the business you risk losing 40% of the cash proceeds to the Tax man.

Perhaps you have made some provision for this eventuality

You may feel that you have prepared for the worst and taken out sufficient Life Cover to protect all parties' shares of the business. You may even have had the presence of mind to set up a Company Will and a Cross Option Agreement.

This would ensure that the surviving business partner/s has the right to buy out the deceased's share of the business. The proceeds of the Life Assurance Policy could be paid to the surviving spouse or Beneficiaries, in exchange for their inherited share of the business. Equally, the surviving spouse or Beneficiaries would be able to exercise their right to sell this share of the business to the remaining business partner/s in exchange for either the market value or an agreed amount covered by a Life Assurance Policy.

But what about the impact a standard Cross Option Agreement has on someone's estate?

If you or a business partner dies their share will pass to their spouse or Beneficiaries through their will. This is now deemed to be part of their estate. Whilst this share is held and the business continues trading then the assets could be exempt from Inheritance Tax if they qualify for Business Property Relief (BPR). Once the Cross Option has been effected then BPR is no longer available on the proceeds i.e. from any Life Assurance. The spouse's assets assessable for Inheritance Tax (IHT) have now increased by the funds received from the Life Assurance Policy risking 40% of the proceeds to IHT. Depending on the size of the business this could be a significant loss.

These assets are also now at risk from attack from any future Remarriage Claims, Creditors or Bankruptcy and Long Term Care Costs.

What about the consequences a standard Cross Option Agreement has for the surviving business partner?

With a standard Cross Option Agreement the surviving partner now owns 100% of the company. This is fine whilst the business is still trading and whilst BPR is still applicable.

However, what would happen when they decide to sell the business?

Now their personal estate will be increased to include the proceeds from the sale. This leaves the spouse wide open to attack from Inheritance Tax, Creditors or Bankruptcy, Divorce Settlements and Long Term Care Costs.

So how do our Company Wills and Cross Option Agreements differ?

We offer Business Estate Planning tailor made to suit you and your business. It takes the Standard Planning Options available on the High Street a significant step further.

Our planning, provides significant protection to the business and reduces the possible impact of Inheritance Tax dramatically. Furthermore the business, and proceeds from a future sale of the business are protected for the Bloodline from IHT, Remarriage, Creditor Claims and Nursing Care Fees.

Our Planning leaves each partner or Director's share of their business to individual Family Trusts through appropriate Clauses written into their Wills.

Furthermore the appropriate Life Cover will also be assigned to 'Shareholder Trusts' so that these proceeds do not impact on the surviving individual estates.

Once the Cross Option has been executed, the proceeds from any Life Assurance Policy replace the share held in the Deceased's Family Trust(s) and so do not form part of the Beneficiary's estate. These funds are now protected against any of the risks named above and the surviving spouse and Beneficiaries still have full access to the Trust assets.

So how does this benefit the remaining business partner?

The surviving business partner still retains their original share of the business but the Deceased's partner's share is passed directly into a Shareholder Trust(s) from where the Life Assurance proceeds were originally paid. The surviving Director still has the fullest of control on the business as he is a Trustee of the Shareholder Trust(s). The Shareholder Trust(s) can also be utilised as a further efficient Income Tax planning tool. Now that a proportion of the business is in the Shareholder Trust(s) any dividends paid into the Trust(s) could be distributed to Beneficiaries of the Trusts who may well have nil or low rate Income Tax.

Should the surviving Director(s) decide to sell the business, only their original share of the business will enter their estate. The remaining share will belong to the Shareholder Trust(s) for which he and his family are Beneficiaries. This share is also protected and cannot be assessed for IHT purposes or be at risk from attack by Long Term Care Costs, Divorce and Bankruptcy.