



...Illness...Incapacity... ...Death.....Retirement... What happens to the Business?

Whilst Personal Estate Planning has become an essential step when considering how Personal Estates are to be distributed, many business owners don't give the same consideration to planning for the future of their businesses in the event of their Death, Permanent Incapacity or Retirement.

Business Succession Planning is an equally prudent measure that Business owners should consider when contemplating their futures.

Below is a checklist that covers some of the personal and economic aspects of Business Succession Planning in the event that a business owner dies, becomes incapacitated or wishes to retire.

Disposal or transfer of business to family members

- ☐ Is your business owned by a Family Trust? If so, have you considered who the Appointor is today and who they will be in the event of your Death or Incapacity?
- ☐ Have you reviewed the Trust Deed for your Family Trust and the constitutions of family companies to ensure that they will operate satisfactorily in the event of your Death or long term illness?
- ☐ Have you considered who will own the shares in the family companies and be the replacement Directors of the companies after your death, incapacity, or retirement?
- ☐ Is there a Family Mission Statement articulating or setting out a commitment to continue the business as a Family Enterprise?

Sale or transfer of business to existing business partners

- ☐ Do you have a written Partnership Agreement that clearly sets out what must occur in the event that a Partner dies, becomes incapacitated or wishes to retire?
- ☐ If the business is owned via a Company Structure or Unit Trust is there an existing written Shareholders or Unitholders Agreement that similarly determines how the company shares or Units in the Trust are to be dealt with in the event of the death, incapacity or retirement of one or more Shareholders or Unitholders?
- ☐ Is there a written Buy-Sell Option Agreement between the Shareholders or Unitholders binding not only themselves but also their estates to allow for the sale of the company shares to continuing Shareholders or Unitholders?
- ☐ Do your Business Agreements contain adequate provisions restraining outgoing business partners from competing against the business in the future?
- ☐ If the business is owned via a Unit Trust Structure has the Trust Deed been recently reviewed?



Sale of business to third parties

- ☐ If the business is being sold to a third party either by Contract for Sale of Business or Sale of Company Shares, has consideration been given to the taxation implications arising from the disposal?
- ☐ If you intend continuing to work in the same or a similar industry after the completion of the sale has consideration been given to ensuring that any restraints given will not preclude your proposed future activity?
- ☐ If you own the freehold from which the business operates is a valid written Lease in place with the new business owner to protect your interests?
- ☐ Do you intend working for the new owner of the business in any capacity after its sale? If so, has consideration been given to entering into a written employment contract?

Preparing contingency plans for business succession is a crucial safeguard for you and your family members in the event that you wish to sell the business or if you were to die or become permanently incapacitated.

The time to plan is now!

At Bateman Battersby we have an experienced Business Advice Team who can assist you in all aspects of Business Law including Business Succession Planning. If you need advice on any of the matters addressed above, please feel free to contact [John Bateman](#) or [Michael Battersby](#) on (02) 4731 5899 or email us at commercial@batemanbattersby.com.au if you require further assistance. Further information is also available in the Business Law section of our website: www.batemanbattersby.com.au.