

Call Stoke-on-Trent (01782) 639716

Wills for Business Owners

A Guide provided by Rod Jones of Convenient Wills

1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

This guide must be regarded as a source of information to supplement your own knowledge. The guide's purpose is to equip you with information to help you decide whether you need to include additional clauses within your Will regarding running your business, and if so then what aspects you need to consider to include.

This guide is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide.

This guide is one of a number of guides and reports available from our web site www.convenient-wills.co.uk; they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

And finally, as you read this guide you may realise that it would be a lot easier, quicker, and simpler for a professional to just get on with making your Will for you. We would like to help. Please [click here](#) to read the full features and benefits of our home visit service, or [click here](#) to register your interest (without obligation) in our services.

Rod Jones

Rod Jones A.C.I.B.
Proprietor of **Convenient Wills**

2 Purpose of this Guide

Many business owners have standard 'simple' Wills. Unfortunately these Wills do not contain the necessary precedents required for the business owners's executors. There could, as a result, be unexpected and sometimes severe consequences for the business owners's family, their business, any co-owners, and employees.

The purpose of this fact-sheet is to:

- ♦ demonstrate how easy it can be to make your business owner's Will;
- ♦ highlight the additional reasons why a business owner should make a Will;

- ♦ list the additional factors a business owner should consider when making their Will;
- ♦ share with you some of the traps to avoid, and tips to follow, when making a Will; and
- ♦ help you to save you money - and provide a simple solution.

3 Glossary of Terms

- ♦ **Executor:** The person you appoint in your Will to sort out your affairs. Executors are the people who carry out the instructions contained within your Will; if they fail to do so they are in 'breach of trust'.
- ♦ **Trustee:** the person you appoint in your Will who is responsible for assets placed into a trust.
- ♦ **Guardian:** The person's appointed to take responsibility for any minor child when the child's parents are unable to do so.
- ♦ **Administrator:** A person who sorts out the estate of a deceased person where the deceased did not make a valid Will, or one cannot be found.
- ♦ **Inheritance tax:** The tax payable on an estate that exceeds the personal allowance of a deceased person after using all available allowances and exemptions.

4 Business Ownership

This section explains:

- ♦ How the law is applied to the different types of business;
- ♦ The use of specific legal documents used in conjunction with your Will.

Sole Traders

Sole traders are, as the name implies, working by themselves for themselves. They are, in effect, the business!

The death of a sole trader usually represents the death of the business. The assets of the business and stock can be sold. Occasionally it is possible to sell the goodwill. Sometimes a sole trader will give their business to a family relation or a competitor.

The personal representatives/executors of a sole trader do have an implied power (in the absence of any express provision in the deceased's Will) to continue the business in order to sell it as a going concern - but that power is limited (to realising the value of the business) and does not continue indefinitely. For the business it is important that the deceased's executor(s) can chase up all monies owing, and have the power to dispose of the business assets, quickly. To avoid difficulties for executors/personal representatives additional executor powers should therefore be included within the business owner's Will.

Self Employed (employer)

'Self-employed' covers the sole trader (see above) and the business owner who has employees working for him/her.

The death of a self-employed employer does not necessarily signal the 'end' of the business; the business often has the potential to be sold or gifted - especially where the owner has successfully previously delegated the task of running the business to a manager in their absence. But this potential opportunity may not be available to the executors or administrators.

The problem for most executors or administrators is that (as with a sole trader) their powers are limited to realising the value of the business within a short time frame. If market conditions are poor, and remain poor during that window of time, the end result can be that the business has to be sold for a 'knock-down' price

- which in turn reduces pro-rata the amount the deceased's family inherits. Add to that the restriction that the executors can only use those assets already involved in the business at the date of the business owner's death and you can see the executors hands can be quite restricted.

Further, the executors are personally liable for any debts they incur - though they are indemnified from the deceased's estate if the purpose of continuing the business is just to realise the business.

The solution to:

- ♦ increasing the time window available to executors to sell or dispose of it;
- ♦ reducing the personal risk to the executors/personal representatives; and
- ♦ maximising the potential value of a business by allowing it to be sold when market conditions are right

To achieve this it is necessary to give the executors the powers needed to be able to continue the business indefinitely (or, at least, for a longer period of time) together with other appropriate powers within the business owner's Will.

For the 'self-employed employer' the appointment of specialist executors (or reserve executors) should also be considered. The business-owner's Will should also indicate what is to happen with the business; is the business to be offered to a specific person or persons and if so, for how much. Is it to be sold generally, or just to cease trading and be wound-up?

Partnerships

If no Partnership Agreement exists between the partners then the partnership is terminated on the death of any partner - under the Partnership Act 1890. No 'if's, or but's'; that is the law! This applies no matter how long the partnership has been in existence. So, not only does the surviving partner lose a work colleague, they also lose their business.

Three solutions exist. These are:

- ♦ Create a simple Partnership Agreement. These can be very simple affairs for say small family owned business; perhaps 4 pages long.
- ♦ Create a complex Partnership Agreement. Where a partnership has two or more partners from different families you should consider making a more comprehensive document - say 30 pages in length; and
- ♦ Definitely do either 1 or 2. Don't forget.

The time to create these agreements is when everything is working fine within the partnership; this is because all interested parties will negotiate sensibly and agree to the terms. When things start not to work out (and this can be because of a breakdown in the relationship, or a partner's death) then it is every man for themselves; amicable agreement is hard to achieve and the end result can be costly law suits. A Partnership Agreement [made when all parties were at ease with each other] usually provides the legal framework from which a solution can be found, amicably.

The partnership agreement contains many of the aspects listed below with a shareholders agreement.

Solicitors charge significant fees for the preparation of these documents. We have a number of contacts who may be able to help you; please contact us to see if we can help you save money.

Company Directors

Ownership of a limited company is represented by a shareholding. On the death of a shareholder the company does not cease to exist - it is by law a separate legal entity.

Unless a document exists to the contrary (e.g. Pre-emption rights contained in the Articles of Association) the deceased's shares form a part of their estate and will be distributed in accordance with the 'Laws of Intestacy' if no valid Will was made, or in accordance with the deceased's Will if a valid Will was made.

This distribution can have unexpected results. The deceased's surviving spouse can end up having the controlling share of the business. The deceased's spouse may have the same determination as their now deceased husband/wife - but they may not. Further, consider for a moment what might the consequences be if a fellow director passed away; could you end up working with their spouse?

It is often best to put into place a Shareholders agreement. For a family company this need not be particularly complex. For a company owned by two or more families then a more formal, and potentially complex, Shareholders agreement should be established.

A shareholders agreement sets out:

- ♦ the relationship of the parties to the agreement;
- ♦ their share of the company;
- ♦ how the business will be run;
- ♦ what happens if difficulties arise.
- ♦ the structure of the company;
- ♦ how it will be financed;
- ♦ who is on the board;
- ♦ what you can and cannot do with shares;
- ♦ what happens to the profits;
- ♦ protection of minority shareholders;
- ♦ what happens to the company if there is stalemate;
- ♦ how the venture can be terminated; and
- ♦ what the business and shareholders are allowed to do; and
- ♦ More, much much more.

Solicitors can charge significant fees for the preparation of these documents. Please contact us to see if we can help you save money.

Cross Option Agreements

The Partnership Agreement or Shareholder's Agreement should cover a wide range of topics. The most important one (from our viewpoint as estate planners) is the action required in the event of a death. To avoid the nightmare scenarios listed above (whereby control of the business vests with a surviving spouse) it is often agreed that the deceased's share will be 'bought out' by the remaining partners or shareholders.

The document that covers this situation is usually a **cross-option agreement** or occasionally referred to as a **double option agreement**. This legal agreement gives:

- a) the remaining Directors/partners the right to buy the shares; and
- b) gives the surviving spouse the right to sell their shares to the Directors/partners.

If the surviving directors/partners want to buy the deceased shareholder/partner's shares then the surviving spouse must sell them. Likewise, if the shareholding is offered to the surviving shareholder/partners by the deceased's surviving spouse then the shareholders/partners must buy. Because it is possible that neither party exercises their option there is no binding sale and business property relief for inheritance tax purposes is preserved.

The agreement needs to specify the method of valuing the shares and the time limit for exercising the options.

To provide the financial resources for these buy-out options life cover is usually required. Calculating how the premiums for this life cover is best 'shared', and maximising the tax breaks on these premiums, is the area of a specialist financial adviser. We can put you in touch with such a specialist adviser: [please contact us](#) for details.

Some life assurance companies will provide a specimen standard wording for a cross option agreements. It is still advisable for the parties to take legal advice to ensure that the agreement meets their requirements. It may be better to have a customised/bespoke agreement drawn up, even if that entails higher legal fees.

5 Business Property Relief (BPR) and Agricultural Property Relief (APR)

If certain conditions are met then a business may qualify for BPR and /or APR on the business owner's death. Relief is available at either 100%, 50%, or 0%.

Please request our guide '[Inheritance Tax -- how to reduce your tax liability](#)'.

6 What Can A Will Do (for a business owner)?

There are many reasons why all adults should make a Will; our web site www.convenient-wills.co.uk explains why, while our guide '[17 Good Reasons to make Your Will](#)' specifically identifies the reasons for people in specific circumstances.

For a business owner there are additional, compelling, reasons though why a business owner should definitely make a Will. For a business owner a professionally drafted Will should also:

- ♦ grant additional powers to your executors - so they can run the business, sell your business, collect the monies owing to the business, be paid where appropriate, and be indemnified by the estate;
- ♦ explain how your business is to be disposed of. This may be superceded by prior documents (e.g. Partnership agreement) - and in which case your Will becomes your fallback document;
- ♦ appoint specialist executors. Many people appoint their spouse - and this may be satisfactory, but do they have the skills, contacts, and drive to continue your business? Remember, they will be mourning your loss. Sometimes it is better to choose other executors just to deal with your business assets.
- ♦ take advantage of any tax breaks that are available. This includes Business Property Relief and Agricultural Property Relief. If care is not exercised these very valuable reliefs can be squandered; and
- ♦ Maximise flexibility by including trusts where appropriate.

The benefits of making a business-owners Will are:

- ♦ Reduce the risk of lasting hardship for their family, their co-business owners, and their employees;
- ♦ avoid annoyance for their suppliers (who may otherwise be kept waiting a significant time before receiving any payment due to them); and
- ♦ protect the value the business (many businesses become worthless where no Will was made because the business's reputation is damaged so badly by the delays and lack of communication.

7 Convenient Wills would like to help you Make Your Will

As a business owner we recommend you make a Will, irrespective of whether your business is a part-time hobby or a multi-million-pound-a-year enterprise.

Although various different methods exist to make your Will (see our free guide: '[11 Ways to make your Will](#)') we recommend you seek professional advice from a will-draftsman experienced in this aspect of the Law.

If you wish to undertake more research then you may find the following guides helpful.

- ♦ '[Trusts, Traps and Wills](#)' -- which explains about the various types of trusts that can be included within a will. The inclusion of a trust within a will can provide very valuable additional benefits that are not available with a standard type of Will;
- ♦ '[The Secrets Will-writers and Solicitors would prefer you not to know](#)' -- lists some of the clever marketing techniques used by solicitors and Will writers to entice you to use their services as opposed

to using a competitors' service - even though the competitor may provide better quality for lower costs; and

- ♦ ['Inheritance tax - and how to reduce your tax liability'](#) - which sets out the various methods by which you can legally reduce your inheritance tax liability.

Making your Will, and especially a business-person's Will, can be time consuming and relatively stressful. The more you research into what should be included in a Will the more you realise there is yet more to learn. And even when the task is done you may have nagging doubts about its legality and validity if you have not used the services of a professional.

The simplest, most time efficient way though to make your will is to [contact us](#).

Using a professional will-writer can be quicker and more cost effective in the longer run.

Convenient Wills is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

Convenient Wills, as a specialist home-visit will-writing service, offers you:

- ♦ **convenience:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;
- ♦ **a bespoke Will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your Will rather than just referring to them as your 'children'; and we will draft your Will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.
- ♦ **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your Will (Unlike some of our competitors). Nor do we do increase our fees if we feel you can 'afford' to pay more; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

The full features and benefits of our home visit will-writing service is available on our [web site](#).

To register your initial interest (without obligation) in our services just [click here](#).

Not all will writing services are the same.

No one likes to consider their demise; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

www.convenient-wills.co.uk

We hope you have found this fact sheet informative. If so then please feel free to share it with others.

More information and helpful, informative guides are available from our web site, or by calling us direct.

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