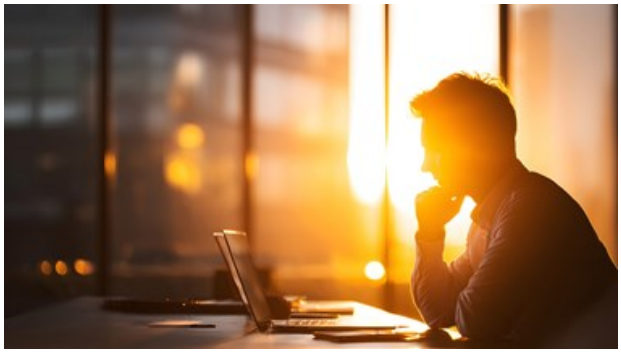


What happens to your company when the sole director dies?

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For many small business owners, their company is one of their most valuable assets. Often the business is structured so that one person is both the sole director and the sole shareholder of the company. But an important question that many people do not consider is this: what happens to the company if that person dies?

The short answer is that the company does not automatically disappear. However, it can quickly become difficult to operate if proper planning has not been done. This article explains what the law says, what can go wrong, and the steps you can take to protect your business, your employees, and your family.

Does a company automatically close when the sole director dies?

A company is a separate legal entity. This means the company exists independently of the individuals who run it.

So if the sole director dies, the company itself does not automatically close down or dissolve. The company continues to exist and still owns its assets, contracts and liabilities.

However, the problem is that the person who had authority to make decisions for the company is no longer there.

In practical terms, this can create immediate difficulties such as:

- No one authorised to access company bank accounts

- No one able to sign contracts or pay suppliers
- Employees potentially unable to be paid
- Business decisions being unable to be made

Without someone legally appointed to take control, the company may effectively be unable to operate.

Who can take control of the company after a director dies?

The Corporations Act 2001 (Cth) provides a mechanism to deal with this situation.

If the sole director and shareholder dies, the executor or administrator of the deceased person's estate can appoint a new director to the company.

The executor may appoint:

- themselves as the director, or
- another person to act as director of the company.

Once appointed, the new director has the same legal authority to manage the company as the deceased director previously had.

This allows the business to continue operating while the estate is administered.

What happens to the shares in the company?

While the director manages the company, the ownership of the company (the shares) forms part of the deceased person's estate.

Shares are treated like any other asset owned by the deceased. This means they will generally pass according to:

- the deceased person's Will, or
- if there is no Will, the intestacy laws under the Succession Act 2006 (NSW).

Once the estate is administered, the shares may be:

- transferred to beneficiaries,
- sold and the proceeds distributed to beneficiaries, or
- retained within the estate temporarily.

The beneficiaries who receive the shares can then decide who should be the long term director of the company.

Why having a will is critical for business owners

The process described above works most smoothly when the deceased person has a valid Will.

A Will appoints an executor, who has legal authority to deal with the estate and quickly appoint a replacement director.

Without a Will, there is no executor. Instead, someone must apply to the Supreme Court for Letters of Administration before they can manage the estate or the company, a process which can take months.

During that time, the company may be left without anyone authorised to run it, which can seriously damage the business.

What complications can arise without proper planning?

While the law provides a pathway for replacing a deceased director, the reality can be more complicated.

Some issues that may arise include:

Business disruption

Without immediate authority, the company may struggle to pay staff, meet contractual obligations or continue trading.

Family members not familiar with the business

Beneficiaries who inherit shares may not understand how the business operates or may not wish to run it.

Tax and valuation issues

The value of company shares may need to be assessed for estate administration and tax purposes.

Trustee companies

If the company acts as trustee of a family trust, the death of the sole director can also impact the trust's ability to operate.

These issues highlight why business succession planning is essential for company owners.

Steps every business owner should take to protect their company

If you are the sole director of a company, there are several steps you can take to reduce risk and protect your business.

1. Have a professionally drafted Will

Your Will should clearly deal with your shares in the company and appoint a trusted executor who understands your wishes.

1. Review the company constitution

   Some company constitutions include provisions dealing with the death or incapacity of a director.

1. Consider appointing an additional director

   In some cases, appointing another director can allow the business to continue operating if something happens unexpectedly.

1. Document a business succession plan

   This may include instructions about whether the business should:

   - continue operating
   - be sold
   - be transferred to family members

1. Ensure key people know where important documents are

   Ensure your executor and key people know where to find important documents, including company records, bank details, and your Will.

A common example: what happens without a plan

Consider a common example.

John owns a small construction company. He is the sole director and sole shareholder. The company employs five staff and holds several contracts.

If John dies unexpectedly:

1. The company still legally exists.
2. However, there is no director authorised to run the business.
3. John’s executor is appointed under his Will.
4. The executor appoints a temporary director.
5. The company continues operating while the estate is administered.
6. John’s shares are transferred to his beneficiaries.

Without a Will, this process may be delayed while someone applies to the court for authority to manage the estate.

Speak to an estate planning lawyer on Sydney's Northern Beaches

Many business owners spend years building their company but overlook planning for what happens if they die.

Without proper planning, the consequences can include:

- disruption to the business
- financial loss for the family
- stress for employees and suppliers
- delays in administering the estate.

Proper estate planning can ensure that your business continues smoothly and that your family receives the benefit of what you have built.

The team at E&A Lawyers on Sydney's Northern Beaches regularly helps business owners put estate plans in place that cover both their personal assets and their company structure. If you're a sole director, don't leave this until it's too late - contact our Mona Vale office today for an obligation-free conversation.

Key takeaways for business owners

The death of a sole director does not automatically end the company, but it can create immediate operational challenges.

The executor of the deceased person's estate can appoint a new director and manage the shares until they are transferred to beneficiaries. However, without a Will or proper planning, the business may face significant disruption.

For business owners, this is a strong reminder that estate planning should include your company structure as well as your personal assets.

If you own a company and want to ensure it is properly dealt with as part of your estate plan, obtaining tailored legal advice is essential.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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