



What Will Happen to the Business if your Business Partner Dies

Date Added: 7 October 2011

When a business man or woman has died their executors are responsible for settling their financial affairs, including business assets. Partnerships come in all shapes and sizes and the problems faced by executors in dealing with an interest in a small family farming partnership are quite different from those involved in the estate of a partner in a large accountancy firm.

Partnership Act 1891

The partnership Act 1891 applies if there is no partnership agreement. The key provisions of the Act are:-

- Section 36(1). Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death of any partner.
- Section 39(3). The estate of a partner who dies is not liable for partnership debts incurred after the date of death.
- Section 45(1). Deals with the position where the surviving partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner and his estate.
- Section 46. Subject to any agreement between the partners, the amount due from surviving partners to the representatives of a deceased partner in relation to the deceased partner's share is a debt accruing at the date of death.

It is therefore vital to have a comprehensive written partnership agreement because if the other partners wish to continue a process of dissolution and reformation would be inconvenient to say the least. For this reason most partnership agreements provide that the death of a partner will not determine the partnership among the other partners and that it should continue from year to year unless and until terminated in accordance with the provisions set out in the agreement. If the agreement provides for the partnership to continue it must go on to set out how the estate of the deceased partner is to be paid out i.e. the valuation and mechanics for paying the deceased partner's estate.

The partnership agreement is likely to provide for one of the following:-

1. Continuation with the estate taking over the deceased partner's share – the effect being to exclude the dissolution provisions of the Partnership Act; or
2. An automatic transfer of the deceased partner's share to the other partners pro rata in exchange for a financial settlement – either a fixed sum or more usually by way of a formula; or
3. An option for the continuing partners to buy the deceased partner's share – again either for a fixed sum or by way of a formula.

Property Interest, Directorships, Sureties and Guarantees

The deceased partner may have held property as nominee for the partnership, acted as director or officer of a company (e.g. where a trustee or nominee company was wholly or partly owned by the partnership) or he acted as a surety or guarantor on behalf of the partnership. In such cases, the personal representatives must ensure that any potential liabilities of third parties are terminated and that there is a continuing indemnity

from the continuing partners in respect of any liabilities accruing or disclosed subsequently to the extent that they are not provided for in the partnership accounts at the date of death.

If you would like to speak to a member of our team regarding partnership or general business matters, please visit the “[For You and Your Business](#)” section of our website.