

## Business Wills and Share Purchase Agreements

by Colleen La Touche  
Solutions Financial Services

Last month there was a lot of publicity in the media about making a personal will. October was being promoted as “Make a Will Month” and to help incentivise the public to act, a number of solicitors waived fees to prepare a will, for a small donation to a nominated charitable organisation.

When it comes to SME businesses however, the importance of having a business will is often overlooked, and the publicity last month did not highlight that if you are in business with other people, this should be something you consider and act on having in place.

No one likes to think what will happen in the event of death. However in business, if a business partner dies, the impacts can be huge. Immediate effects will be felt in regards to the day-to-day running and continued success of the business, and quite often because of the uncertainty and lack of planning for this type of event, the outcomes for both the remaining shareholder/s and deceased estate can be catastrophic.

Insurance is often used as a funding mechanism to purchase a partner’s equity in a business should they die prematurely or become totally and permanently disabled. In consultation with a client’s accountant, lawyer and risk advisor, the ownership on any share purchase insurance policies should be vigorously discussed to ensure that in the event of making a claim the correct process is in place and the funds are paid to the correct entity. This is usually documented in a Buy/Sell Agreement.

When meeting SME clients who have been referred to me, I am often astounded that their insurance policies in place, for the purpose of Share Purchase agreements, are not documented correctly, and are often lumped together with other sums insured, which have a completely different purpose. Not only does this cause ‘grey’ areas for all concerned in the event of a claim, it also causes uncertainty as to whether premiums can be tax deductible, and whether proceeds at claim time are assessable.

Another area of concern is that business owners often don’t make time to review existing policies, and as a consequence the levels of sums insured might not reflect the true value of their business. A policy that has been put in place for a Share Purchase agreement will not be able to fulfil its purpose if the value of the business has changed.

Insurance is one of the most cost-effective funding options for Buy/Sell Agreements as there are immediate (in the event of death) funds available. This eliminates the surviving partner/s having to raise capital to purchase the shares from the deceased person's estate. Premiums for these insurance covers annually are significantly lower than the cost of repaying the principal and interest on a loan.

If you are a business owner, you will have worked hard to achieve your goals to ensure the ongoing success of your company. It is highly probable that your business will have become one of your most valuable assets.

If you have not reviewed your business risk insurances, or are uncertain the levels of cover are correct, call your risk advisor for a review.

It is important to understand what is in place, and highlight any areas of concern before an event occurs, which could potentially not only destroy your business, but you and your families livelihood.

For many, insurance policies and their wordings can be confusing. Often the reason and purpose of contracts are forgotten over a period of time, and need to be re explained. If you would like a no obligation review of your existing risk insurances (life, trauma, total and permanent disablement, income protection and medical covers), please contact [colleen@solutions.gen.nz](mailto:colleen@solutions.gen.nz).



Colleen La Touche knows personally the effects that an unforeseen illness can have on a family and business. Her approachability, down-to-earth nature, and keep-it-simple approach mean clients understand their contracts and how they will work at claim without any confusion.

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