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## **What happens to a company upon the sole director's death?**

It is very common for a small business to be operated by a company with just one director/shareholder. Business owners can easily get caught up in the myriad of tasks that face them on a daily basis. However, sole directors should take a moment to consider what will happen to their company upon their death.

Ordinarily, if a director dies the surviving directors are still able to manage the company. The same will apply upon the death of a sole shareholder. The directors are able to continue running the business until the beneficiaries under the sole shareholder's will have the shares transferred to them.

In the case of a single director company, problems may quickly arise as the director's death can leave the company without a person properly authorised to manage it.

### **What does the Corporations Act say?**

Section 201F of the Corporations Act 2001 sets out special rules for the appointment of directors for single director/single shareholder companies. If a person dies, who is the only director and the only shareholder of a company, and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

Basically, this means that the sole director must have had a valid will in place before his or her death which nominates one or more individuals to be the director's executor (ie. personal representative) or trustee. As such, the personal representative or trustee may appoint a person as the director of the company. The new director will have the same powers, right and duties of the deceased director.

### **Death of a director without a will**

As outlined in the Australian Securities & Investments Commission's (ASIC) Information Sheet 73:

*Where there is no will, a near relative or other person would have to apply to the Supreme Court for letters of administration to manage the estate and this could take some time - possibly weeks, if not months. Alternatively, in the absence of any immediate relatives or other obvious people to deal with the estate, the Public Trustee may step in and administer the deceased estate, but this process can also take months.*

*During that period when there is no director, the company may be unable to operate. With no-one properly authorised to make management decisions or act for the company, it may be unable to trade. Banks and other financial institutions in particular may be unwilling to accept instructions in relation to a company's trading*

*account if they are not satisfied there is someone properly authorised to act for it. Equally, staff and suppliers may not be able to be paid, which can quickly have a deleterious effect on the reputation and value of the company to the beneficiaries of the estate.*

It is, therefore, vital for sole directors to have a valid will in place and if possible, provide details in the will as to the beneficiaries of the company's shares. This will help to create a smoother transition of the company to the new directors, who may then continue to operate the business, sell it to a new owner or wind up the company, depending on the circumstances.

Please contact SRM Lawyers if you have any enquiries.

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