

## BUSINESS SUCCESSION

**Business succession planning is a critical part of an overall wealth creation and protection strategy.**

If you are in business for yourself or with other parties, you or your estate require certainty as to how the transfer of ownership and control will occur in the event of the retirement, divorce, bankruptcy, death, trauma or disability of yourself or one of the other people you are in business with. A business succession plan involves developing a strategic plan to ensure a smooth and trouble free hand over of the business in these circumstances.

There are numerous cases where one owner in a business suddenly dies, and the Executor of the estate looks to the remaining owner for the estate's share of the value of the business. If no agreement is in place this can put significant pressure on the continued viability of the business, with the worst case scenario likely to be a fire sale well below the expected value of the business. This is especially the case with pharmacies, where the ownership regulations place a time frame upon the length of time an Executor of an estate can hold an interest in the pharmacy, thus adding further pressure to a sale.

A buy/sell agreement is the tool most often used in this situation. It is a legally enforceable contract between the owners of the business or a third party, and can provide a structured timetable for the transfer of the business interest, as well as setting out who will acquire the interest, the valuation method to be used, and the mechanism for funding of the transfer.

The agreement can allow for the individual structure of the business, whether it be a partnership, company or trust and provide for the entry & exit of partners, shareholders or unitholders (within Pharmacy Council guidelines & the pecuniary interest provisions) having regard to the stamp duty and Capital Gains Tax issues. Agreements can also set out the rights & obligations of the parties in the event of retirement, bankruptcy or divorce of the individual.

Generally the mechanism for funding transfers in the event of death, trauma or disability is by way of an insurance policy on each participant's life, the proceeds of which are used to buy out the deceased or disabled party's interest. There are different ways of holding the insurance policies, each of which has various tax implications.

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