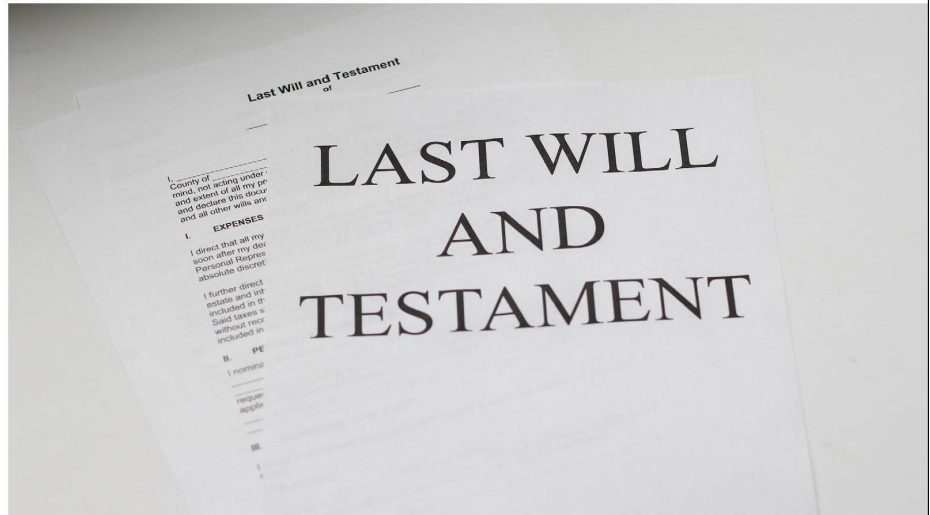


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Business wills and the business of succession plans



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Succession planning is often regarded as something that only large businesses do. However, it's even more critical for small business owners to have a plan - as death or disability in a small or family-run business would, undoubtedly, spell the end for that company. A business will is an essential component of the succession plan and should not be confused with an individual's will that is executed in terms of the Wills Act. A business will, the succession plan for your enterprise, is also known as a buy-and-sell agreement as it will express the wishes of the business owner as to who will take over their share in the business and at what price. It is important that your will speaks the same language as the future of your business.

PwC's 2021 Africa Family Business Survey noted that 76% of the continent's family businesses don't have succession plans in place. In addition, only 41% of these business owners have a last will in place, which means that, when they die, there is no fixed plan to ensure that the business is formally passed down to the next generation.

Many business owners appreciate the importance of having a succession plan or business

will, but executors will often find some wills difficult to implement because they simply do not contain enough detail about how to deal with certain issues. Often there is also not enough cash in an estate to fully implement the last will and testament - even if the business owner was in possession of millions of Rands worth of assets.

Sole proprietors or business owners in a partnership should pay special attention to the detail of their succession plans and the liquidity of their assets, as this will determine the extent to which any inheritance will be possible.

Few sole proprietors realise that when they die, their business ceases to exist. As such, executors of the estate cannot keep the business running as if nothing has changed, so the last will and testament must make provision for someone to take over the business while the estate is being wound up - or effect a buy-and-sell agreement with a third party, otherwise the business will be forced to shut its doors.

A partnership will be automatically terminated even if the other partner plans to continue with the business. The deceased partner's estate must be wound-up, and the executors may not transfer the business assets to the other partner if there is not enough cash in the business or no buy-and-sell agreement in place.

The lack of a good succession plan or an incontestable business will can have severe consequences in terms of employment stability for staff, outstanding tax matters, and current lease agreements or contracts.

Business owners should enlist the help of their legal advisors to assist in creating a compliant and incontestable business will so that any potential shortfalls in terms of procedure and financial requirements can be identified and corrected before it is too late. **a**

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