



## Business intestacy audit

If you're a business owner, have you thought about a business will? If not, use this business intestacy audit with your financial adviser to help match your business's aspirations with reality.

### What's a business will?

It's a formal agreement or special provision put in place that details what should happen to your share of the business and your liabilities if you die or become critically ill.

### Do I need one?

As a business owner, have you thought about what would happen if you or one of your co-owners were to die or become seriously ill?

- Do you have an exit strategy in place for the death of an owner?
- Where would the money come from to buy the deceased's share in the business?
- Do the business owners have an agreement in place to make sure the surviving owners can buy-out the shares of the deceased?

### We can help

If you don't have a business will, use this questionnaire to make sure that what you want to happen to your share of your business – should you die or become critically ill – actually happens.

The following information is based on our understanding of current legislation, taxation law and HM Revenue & Customs (HMRC) practice, which may change.

#### What's 'business intestacy'?

It's what will happen as a result of not having a business will.

When we talk about a 'business owner', this could be a partner, member of a limited liability partnership (LLP) or shareholding director.



## Partner – death of an owner

What you'd like your widow(er), dependants or other beneficiaries under your personal will to have

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	The continuing right to share in profits as a partner.		<b>No.</b> Under the Partnership Act 1890 (PA), the partnership is dissolved on death if there's no agreement to say otherwise. Even if the business isn't dissolved and the surviving partners carry on trading, there's no 'inherited' right to become a partner. But the deceased's personal representatives would be entitled to the same share of profits as the deceased would have been, or interest at 5% a year on that share of assets.
2	A right to call for the repayment of any debt (loan account) owed to you by the business.		<b>Yes.</b> These loans would normally be repayable on demand unless otherwise specified in an agreement or there's a provision in the deceased's will telling the personal representatives not to call in the loan. But the business would need access to available funds to actually repay the loan.
3	A right to wind up the business to get an amount representing the value of your interest in the business.		<b>No.</b> But the business is automatically dissolved (see (1) above). The business would be dissolved under the PA, unless there's a different provision in the partnership agreement. But the value they receive might be less than they'd like.
4	A right to force the surviving partners to buy your interest in the business.		<b>No.</b> The PA says the partnership has to be dissolved.
5	A right to sell your interest in the business to any willing buyer on the open market.		<b>No.</b> The PA says the partnership has to be dissolved. Even if it's not dissolved, there can't be a sale as what's inherited is the value of the interest, not the actual share of the business.
6	An obligation to sell your interest in the business to the surviving partners.		<b>No.</b> See (4) above.

## Partner – critical illness of an owner

### What you'd like to have as a critically ill partner

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	A right to an unreduced share in profits throughout the term of the critical illness, regardless of whether you're working or not.		<b>Yes.</b> This is set out in the Partnership Act 1890, unless the partnership agreement says otherwise.
2	A right to sell your business interest to the co-partners.		<b>No.</b> And the partnership won't automatically be dissolved, as it might be if you died.
3	A right to sell your business interest to a willing buyer on the open market.		<b>Yes</b> - in theory, but it's highly unlikely. The co-partners don't have to carry on in partnership with a buyer they don't want to work with. In practice, only a buyer the continuing partners were happy with would buy in like this. It might be possible to sell/assign for value your rights to profits but this might not be possible in practice.
4	A right to wind up the business.		<b>No.</b> The automatic statutory dissolving of the partnership is on death only.
5	An obligation to sell your business interest to the co-partners.		<b>No,</b> unless it says this in the partnership agreement.
6	A right to call for the repayment of any outstanding loan you've made to the business (loan account).		<b>Yes.</b> These loans would usually have to be paid back if you asked, subject to any other agreements in place.

## Member of an LLP – death of an owner

What you'd like your widow(er), dependants or other beneficiaries under your personal will to have

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	The continuing right to share in profits as a member.		<b>(Most likely) No.</b> There's most likely to be a member's agreement specifying what should happen. It's unlikely that any continued rights to share in profits would be given to a member's widow(er) or partner. If there were only two members, one died and no other member joined within six months, the LLP would automatically be dissolved under the LLP Act 2000.
2	A right to call for the repayment of any debt (loan account) owed to you by the business.		<b>Yes.</b> These loans would normally be repayable on demand unless otherwise specified in the agreement or there's a provision in the deceased's will telling the personal representatives not to call in the loan. But the business would need access to available funds to actually repay the loan.
3	A right to wind up the business to get an amount representing the value of your interest in the business.		<b>No.</b>
4	A right to force the surviving members to buy your interest in the business.		<b>No.</b>
5	A right to sell your interest in the business to any willing buyer on the open market.		<b>No.</b> There can't be a sale as what's inherited is the value of the interest, not an actual share of the business.
6	An obligation to sell your interest in the business to the surviving members.		<b>No.</b>

## Member of an LLP – critical illness of an owner

### What you'd like to have as a critically ill member

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	A right to an unreduced share in profits throughout the term of the critical illness, regardless of whether you're working or not.		<b>Yes.</b> As a critically ill member, you continue to be entitled to your share of the profits, unless there's an agreement that says otherwise.
2	A right to sell your business interest to the co-members.		<b>No.</b>
3	A right to sell your business interest to a willing buyer on the open market.		<b>Yes</b> - in theory, but it's highly unlikely. The continuing members don't have to carry on in partnership with a buyer they don't want to work with. In practice only a buyer the continuing members were happy with would buy in like this. It might be possible to sell/assign for value your rights to profits but this might be difficult in practice.
4	A right to wind up the business.		<b>No.</b> The automatic statutory dissolving of the partnership is on death only.
5	An obligation to sell your business interest to the co-members.		<b>No,</b> unless it says this in the member's agreement.
6	A right to call for the repayment of any outstanding loan you've made to the business (loan account).		<b>Yes.</b> These loans would usually have to be paid back if you asked, subject to any other agreements in place.

## Shareholding directors – death of an owner

What you'd like your widow(er), dependants or other beneficiaries under your personal will to have

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	The right to be appointed a director with accompanying rights to directors' fees.		<b>Minority or 50/50 shareholder: No.</b> Directors are appointed by a majority of shareholders (51%). <b>Majority shareholder: Yes.</b>
2	The right, as shareholders, to any dividends declared.		<b>Yes.</b> But dividends are recommended by a majority vote of the board and agreed by a majority vote of the shareholders. So a minority or 50/50 shareholder will have no power to force dividend declaration. And if profits are reduced then a dividend might not be financially feasible anyway.
3	The right to call for the repayment of any outstanding directors' loans owed to you.		<b>Yes.</b> These loans would normally be repayable on demand, subject to any special terms in the agreement or any provision in the deceased's will telling the personal representatives not to call in the loan.
4	The right to sell the inherited shares to the continuing shareholders and force them to buy.		<b>No.</b> Model articles, or 'Table A' articles from the Companies Act wouldn't provide this but there might be a right of first refusal – see (5) below.
5	The right to sell the inherited shares to any willing buyer on the open market.		<b>Yes.</b> There might be a provision in the articles though, giving the continuing shareholders the right of 'first refusal' for a limited time. There might also be a provision enabling the continuing shareholders/directors to refuse to register a transfer of shares. But this shouldn't be unreasonably prevented.
6	The right to sell the inherited shares to the company and to force the company to buy (and cancel) the shares.		<b>No.</b> A corporate share purchase would normally be permitted under standard articles but there would be no compulsion for the company to 'buy'. But if you have a majority shareholding and wanted a corporate share purchase this could then happen, as long as the statutory conditions were satisfied.
7	An obligation to sell the inherited shares to the company or to the continuing shareholders if requested.		<b>No.</b> See (4) and (6) above.

## Shareholding directors – critical illness of an owner

### What you'd like to have as a critically ill shareholding director

Aspiration versus reality – put a 'Yes' or 'No' in the empty box below.

	Situation	Aspiration	Reality – what will happen without a business will
1	A right to continue receiving directors' fees indefinitely.		<b>No.</b> Lifetime service agreements aren't possible – five years is the longest. In practice, directors can be dismissed by a majority vote of the shareholders with compensation for the remainder of their service contract. Under a yearly appointment, fees are voted yearly. If you have a majority shareholding then reappointment as a director will be easier.
2	A right to continue to be entitled to dividends.		<b>Yes,</b> if any are declared – which isn't guaranteed. Dividends are recommended by the board and voted for by the majority of shareholders. So a majority shareholder would have control over this process, but minority and 50/50 shareholders wouldn't. And if profits are reduced, a dividend may well not be financially possible.
3	A right to call for the immediate repayment of any outstanding loan made to the company (loan account).		<b>Yes.</b> These loans would usually have to be paid back if you asked, subject to any other agreements in place.
4	A right to sell shares to the co-shareholders and force them to buy.		<b>No.</b> Mutual agreement is, of course, possible, but model articles or 'Table A' articles adopted unamended from the Companies Act (CA) wouldn't make it compulsory, though they might include a right of 'first refusal' – see (6) below.
5	A right to sell shares to the company and force it to buy.		<b>No.</b> A corporate share purchase would usually be allowed, but not compulsory. But a majority shareholder could make sure that this will happen, as long as the statutory conditions were satisfied.
6	A right to sell shares to a willing buyer on the open market.		<b>Yes,</b> but the articles might give the continuing shareholders the right of 'first refusal' for a limited time. The continuing shareholders/directors may also have a provision in the articles that lets them refuse to register a transfer of shares, but they shouldn't prevent this unnecessarily.
7	An obligation to sell shares (if requested) to the co-shareholders/company.		<b>No.</b> Model articles or 'Table A' articles adopted unamended from the CA wouldn't provide this, though there might be a right of 'first refusal' – see (6) above. Individual and corporate share purchase would normally be allowed, and parties can reach a mutually acceptable agreement.

## So, do you need a business will?

Is what will happen to your business assets and liabilities the same as what you'd like to happen if you die or become critically ill?

If not, it's really important to speak to your adviser and put in place arrangements that reflect your wishes and those of your co-owners and your families.



[aegon.co.uk](https://aegon.co.uk)



@aegonuk



Aegon UK



Aegon UK

Aegon is a brand name of Scottish Equitable plc. Scottish Equitable plc, registered office: Edinburgh Park, Edinburgh EH12 9SE. Registered in Scotland (No. SC144517). Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Financial Services Register number 165548. An Aegon company. © 2019 Aegon UK plc

IP 00270650 05/19