

Update: 7 April 2014 Loss of capacity – key stakeholder



Fleming Muntz
Solicitors



Background

Any well run business will almost certainly have done a "SWOT" analysis, identifying potential future problems and planning in advance how to deal with them.

Unfortunately, that planning often overlooks the loss of capacity of a key stakeholder, which can be far more disruptive than the death of that person.

Proper planning

Preparing for the death or sickness of a member of a family business involves many issues, including:

- Adequate insurance
- A properly prepared business succession plan
- An up to date estate plan.

What can be overlooked is the need for an enduring power of attorney tailored to address business needs.

The reality?

Advancements in medicine mean that we are now living longer, with the prospect of loss of capacity very real. If the key stakeholder in a business has a loss of legal capacity, the business can grind to a halt. The ability to purchase or sell property, or to obtain or restructure finance, will at best be severely restricted and at worst impossible, necessitating an application to a government tribunal to fix the problem.

The Solution?

To ensure a family business continues to be successful and deal with intergenerational change, it must be structured to survive and thrive even in the tragic event of the death or incapacity of a key stakeholder.

How can Fleming Muntz help?

We have extensive experience at Fleming Muntz in business succession planning, and are accredited specialists in business law.

It is critical to plan for future events *now*, whilst key stakeholders have capacity to sign necessary documents.

We would be pleased to assist you or your clients with advice on appropriate strategies to avoid unwanted outcomes.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

Like you, we prefer to avoid unwanted emails. If you would rather not receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

For more information, please contact:



Paul Muntz
Dip Law (SAB)
Accredited Specialist Business Law
Partner
Telephone: (02) 6021 2222
Email: Paul.Muntz@flemingmuntz.com.au

**Solicitors for New South Wales
and Victoria**

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

enquiries@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804

Telephone (02) 6021 2222

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