



Concepts & Results

Free Resource

What Happens to Your Business If You Die or Become Incapacitated?



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In the world of business, most owners prepare for everything—insurance, cash flow, succession plans. But very few ask the most important question:

What happens to my company if I die or can't act as director?

The harsh reality is this: if you're the sole director of a company and you die or become mentally incapacitated without a legal fallback, **no one** can act on behalf of the company. No bank account access. No signing authority. No payroll. The business grinds to a halt—at the worst possible time. We'll unpack:

- Why this gap exists in most company constitutions.
- What the law says.
- How a **Successor Director Strategy** closes the gap.
- Case studies and real-world impacts.
- What you need to do now.

THE LEGAL VACUUM MOST BUSINESS OWNERS DON'T KNOW ABOUT

Under Australian law, specifically the *Corporations Act 2001*, if a sole director of a proprietary limited company dies, there is **no automatic mechanism** for a replacement to take control unless:

- The constitution provides for it; or
- There is a provision in the Will; or
- The court appoints someone.

But the problem is that court appointments take time. Wills can take weeks or months to go through probate. Meanwhile, your business is:

- Locked out of bank accounts.
- Unable to process wages or pay suppliers.
- Paralyzed from making operational decisions.
- And your family? Powerless.

THE REAL-WORLD CONSEQUENCES

Imagine these real consequences:

✗ A Frozen Payroll

Your employees miss payday. Morale drops. Key staff begin looking elsewhere.

✗ Supplier Chaos

No director to authorise payments or sign documents? Contracts stall. Deliveries pause.

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✗ **Family Financial Stress**

With business income frozen, your spouse can't access dividends or distributions. Bills start piling up at home.

✗ **Business Reputation Hit**

Clients and partners quickly notice the lack of leadership. Your brand suffers.

CASE STUDY – AVOIDING BUSINESS COLLAPSE WITH ONE DOCUMENT

James, 61, Sole Director of a Construction Company

James suffered a sudden heart attack. He was in a coma for two weeks. During that time, his company:

- Had \$450,000 in accounts receivable.
- Needed \$120,000 in payroll and BAS obligations met.

But no one could authorise payments. The business was days away from defaulting on key contracts.

Fortunately, James' accountant had helped him implement a **Successor Director Appointment** under his constitution. His daughter, listed in that document, was able to step in immediately. With her appointment recorded with ASIC, she accessed the accounts, paid the team, and preserved the business.

WHAT IS A SUCCESSOR DIRECTOR STRATEGY?

A **Successor Director Strategy is a legal framework built into your company constitution that:**

- Appoints a nominated person (Successor Director).
- Grants them the power to act if you die or become incapacitated.
- Ensures immediate access to company functions.
- Complies with ASIC and Corporations Act requirements.

This can be added by updating your company's constitution and ensuring the successor is legally recognised.

WHAT THE LAW REQUIRES

According to Section 201F of the *Corporations Act 2001*, a personal representative (e.g. executor) may appoint a new director if the sole director dies—but **only after probate** is granted.

In reality, that could take **6–12 weeks**, or longer if the estate is contested.

ASIC's model constitution also doesn't provide for automatic appointment unless you add it in yourself. So even if you think you're covered—you might not be.

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WHO SHOULD BE YOUR SUCCESSOR DIRECTOR?

Choosing the right person is critical. Your Successor Director should:

- Understand your business (or be guided by your advisors).
- Be trustworthy and competent.
- Be willing to act in the interim or permanently if required.

Common options include:

- A spouse or adult child.
- A business partner.
- A trusted advisor or accountant.
- You can appoint more than one person or give limited powers if preferred.

WHAT IF YOU ALREADY HAVE A WILL OR POWER OF ATTORNEY?

Good—but not good enough.

- **Your Will:** Can only take effect after you die and only through probate.
- **Enduring Power of Attorney (EPOA):** Typically does not extend to directorship of a company unless clearly defined—and only applies while you're alive.

A **Successor Director Strategy** bridges this gap with immediate effect and legal recognition.

THE PROCESS – HOW WE HELP

Our firm has developed a **step-by-step Successor Director System**, which includes:

1. Reviewing your current constitution.
2. Advising on appropriate appointments.
3. Drafting the constitutional amendments.
4. Lodging ASIC documentation (if needed).
5. Providing advice to family or partners on how to enact the strategy when needed.

FREQUENTLY ASKED QUESTIONS

Q: What happens if I have more than one director?

A: This strategy is essential for sole director companies, but it's still recommended for companies with two directors where one controls the business or key decisions.

Q: Can I appoint more than one Successor Director?

A: Yes, you can appoint multiple successors and outline the order of succession.

Q: Will this cost thousands?

A: No. It's a one-time setup cost, and the value it provides in protecting your company is exponential.

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DON'T LET YOUR BUSINESS BE LEFT IN LIMBO

You've worked hard to build your business. Don't let a legal technicality ruin what you've created.

👉 Take action today:

- Book a free Successor Director Strategy session.
- Protect your company, family, and employees.
- Sleep easier knowing your business is secure—even if you're not there.

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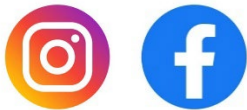
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