LawCentral

Bulletin 252

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Dead director, dead company

Question: My client died without a Will. He was the sole director and shareholder of his company. The company has ongoing contracts and commitments. The company has no other employees or officers. He separated from his wife, but never divorced. There are no children, but he has a brother. As his accountant, caught in the middle, I want to help the company along until the "rightful owner" turns up.

Answer: This is an unfortunate situation for you to deal with. There are always problems when a person dies without a Will. Without a Will, administering the estate drags on. Beneficiaries can wait a long time before the Court provides a Grant of Letters of Administration. This Grant is what allows the administrator to deal with the deceased's assets.

If a company director dies, then the surviving directors can continue to manage the company. They can even appoint directors until the next shareholder meeting.

What happens when a sole shareholder dies? Normally the directors continue to manage the company. The beneficiaries of the Will can turf them out in the future. This is after they get the shares transferred to them.

However, what happens when the sole shareholder and sole director are the same? Section 210F of the *Corporations Act 2001* says that on the death of a company's sole shareholder and director:

- the executor of the Estate has the power to appoint a new director of the company;
- the executor takes on the powers, rights and responsibilities of the deceased director;
- the executor has this power until the shares are transferred to the beneficiaries; and
- the beneficiaries can then appoint directors, as they wish.

However, to have an Executor you need a Will. If no Will exists, a near relative or other suitable person applies to the Court for a Grant of Letters of Administration. This may be the deceased's brother or his estranged wife. The Grant allows them to manage the estate. However, it takes months. If no suitable person exists, the dreaded Public Trustee can intervene to administer the estate. This may also take significant time. You then get the government running the company.

The company can't operate until the Grant of Letters of Administration is made, (or alternatively, the Public Trustee gets its greedy clutches into the company). Until this time, no one has the authority to make management decisions. The company may be unable to trade. Do banks take instructions from a "friend" of the company? Sadly, they don't. Only people with authority can command. As there is no one in authority the company is rudderless. Suppliers and staff may not be able to be paid. A purchaser can not buy the shares until the beneficiaries get the shares.

Sorry, there is no good news here. This situation highlights the particular importance of a sole shareholder and director having a valid Will and the need for a Power of Attorney for your company.

Lastly, because you are an accountant I would be reluctant to stick my neck out. If something goes wrong, your insurance may not cover your actions. You are a good person to want to help, but be careful.