

Business Continuity Planning

Like taxes, business continuity planning is something most people don't like to handle, but it is just as important as paying your taxes. Business continuity planning creates systems and procedures for what happens when the unexpected happens—whether that's weather, illness, or death.

This type of planning is essential to agents, teams, brokers, and firms. The law in Virginia addresses what happens if the sole broker at a firm dies or becomes disabled. There is a list of individuals that DPOR may authorize to temporarily wrap up the business, but there are two potential issues with relying on the law: first, the law requires DPOR to appoint specific people in a specific order, which may not be who you want to wrap up your business. Second, relying on the law could leave clients and agents in limbo for a period of time.

For teams and agents, existing brokerage agreements or team agreements will allow clients to be taken care of, but these agreements may not go far enough to deal with practical issues.

When creating a business continuity plan, you should consider the following questions:

1. Who do I want to be responsible for handling my business if something happens to me? If this person is a family member, will they be able to handle matters or will they be busy dealing with other issues?
 - a) For brokers, if you are the only broker at the firm, the VREB must appoint the person qualified by the court to administer your estate first. Next is someone designated under a power of attorney which specifically references [Virginia Code section 54.1-2109](#) if there is no one qualified to administer your estate, or you are disabled. There are a few ways you can have influence in who wraps up your business. For one, you can have a trusted agent at the firm get their broker's license who will step up if something happens to you. Alternatively, you can have an agreement with a broker at another firm where each of you have a concurrent broker's license at the other's firm for the sole purpose of business continuity.
 - b) For teams, ensure that your team agreement with the team and broker addresses what happens in the event one or more team member is impacted. Remember that under Virginia law, teams must have two or more people, at least one of whom is licensed. This means that if one member of a two-member team dies, the remaining team member must cease all advertising and operating under the team license until another person (licensed or not) is affiliated with the team.
2. What accounts will someone need access to? This includes bank accounts, email accounts, and other accounts.
 - a) For brokers, consider who can access your escrow accounts if something happens mid-transaction.
 - b) For teams, consider who can access the team accounts.

When creating a business continuity plan, you should consult with an estate attorney as well to determine what documents you need in place. You also want to review your business continuity plan at least annually to make sure that it is still how you want things handled, and that the people involved are still willing and who you want to have involved.

Should you have any questions about this piece, please contact the [Virginia REALTORS® Legal Hotline](#).