



Business Lasting Power of Attorney Guide

If you own a business and are suddenly unable to take care of it due to an accident or illness what would happen?

Why is a business Lasting Power of Attorney (LPA) important?

How would your business fare if you were unable to contribute to the running of it any more? When you own a business, it's important to consider whether a separate LPA specifically for your business matters is appropriate. In most cases it will be.

Certain business activities would cease. For example, if a bank account signatory lacks capacity the bank can freeze the account to protect the vulnerable adult. This would have a dramatic impact on the business and staff especially if the account held funds to pay employees. Also, contracts entered into by a person who had capacity but subsequently loses it may become unenforceable because of their incapacity.

In some cases, you may also have a personal financial LPA but it is likely that the attorneys you appoint are family members who may not have the knowledge necessary to run your business or have sufficient business knowledge. In addition, bank accounts may be in the name of the company and not capable of being operated by an attorney appointed pursuant to a personal financial LPA. This raises potentially serious issues for the continuation of the business. In such cases a personal financial LPA and a business financial need to be made.

Appointing an attorney for business matters is like taking out another insurance policy for your business continuity. It goes a long way to ensure that the business can continue to run smoothly and that someone you trust is going to take care of it and has the necessary skills.

Who can I appoint as my attorney?

You should consider who would be the most appropriate person to assume responsibility for the running of your business. This is often not the person you would choose for the management of your personal finances. It might be a business partner or an accountant. It's also likely to be someone who knows the business well. An attorney should be trustworthy, competent and reliable.

A business LPA doesn't cost any more than a standard personal LPA and should be considered as part of a wider business succession plan.

What would happen if I do not have a business LPA?

Unless you have created a business LPA, your future representative will have to make an application to the Court of Protection for a deputy to be appointed. This is a costly and lengthy process and the deputy has to produce annual accounts to the Court of Protection showing all transactions made and the reasons for them. The cost of the application would be far greater than that of making a Business LPA.

It is important to note that until a deputy is appointed crucial day to day operations may not be able to be carried out because your representatives may not have the authority to do them.

What do I do next?

To make a valid LPA you must have the mental capacity to understand what you are doing and you must not have been put under any pressure to create it. The LPA must also be signed by a certificate provider who confirms your understanding of the document and who must either be someone you know well, or a suitably qualified professional.

One of the decisions you need to make is whether you wish your attorneys to be able to act while you still have mental capacity, or if they can only act when you have lost mental capacity.

Before your attorneys can act at all, the LPA must be registered with the Office of the Public Guardian (OPG). As the registration can take several weeks, it's strongly recommended that the LPA is registered immediately upon signature so that it's in place when needed. If you don't register the LPA, should you lose capacity, your attorneys won't be able to act on your behalf until they can get the LPA registered, which may then be too late. Another serious issue could arise with delaying the registration in that any technical errors with the witnessing or dating would mean that the paperwork may be rejected at a time when you don't have the mental capacity to complete a new instruction. Immediate registration is best practice and strongly recommended by the OPG.

When your LPA is being drafted you have the option to restrict how and when it's used. You can appoint substitute attorneys and elect a person (or people) that must be notified before your LPA can be registered.

Tim Turner has lots of experience advising clients in this area.

**If you would like to discuss LPAs further,
please contact Tim on
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