Lasting power of attorney for business

To protect your commercial interests for the future, every business owner should consider making a lasting power of attorney (LPA) for business.

Preparing for every eventuality is part of running a successful business, but contingency planning for ill health and incapacity is often overlooked. As a business owner, it's important to consider what would happen if you could not make decisions.

Issues may include access to company accounts, who can authorise payments to employees, suppliers, and creditors – and who should be appointed as a new director to manage the business.

What is a lasting power of attorney for business?

A lasting power of attorney (LPA) is a legal document allowing you to appoint someone to make decisions for you if you cannot do so at some point in the future.

There are two types of LPA – those that deal with financial affairs and property and those that deal with healthcare matters. The two are nearly always completed together.

Business LPAs are a type of financial LPA that deals specifically with the assets and financial considerations relating to your business.

While a business LPA will be appropriate in most circumstances, it is important to consider the type of business you own:

Sole trader

Sole traders, by definition, rely heavily upon themselves and are also unlikely to have a separate legal entity between them and their business.

Appointing an attorney under a business LPA will be an effective way to provide for the business's continuity in the event of being unable to make decisions.

Partnerships

Being in a partnership with several partners will require you to check the terms of the partnership agreement. The partnership agreement may already contain a provision to cover what would happen if one of the partners becomes incapacitated.

If such a provision exists, the business's continuity would be adequately covered, making a business LPA unnecessary.

If you're unclear about the provision made in the partnership agreement, you should seek advice on the LPA's wording to ensure it doesn't conflict with the provisions in the partnership agreement.

Directors of companies

If you are a company director, you will need to check the company's articles of association. The termination of a director's appointment in the event of incapacity will often be provided for in the articles of association, thus protecting the company's interests.

However, the company's articles may not sufficiently provide for temporary incapacity (or other temporary absence), where termination would be disproportionate, unnecessary and potentially harmful to the business.

If the articles of association do not include such a provision, you may want to seek advice and consider including one.

For sole directors of small private companies, the articles of association are unlikely to terminate the director's appointment, as nobody else would continue to run the company. In such circumstances, a business LPA would be appropriate.

Can an LPA cover both your personal and business affairs?

Having a single LPA and appointing attorneys to administer your personal and business assets is possible. It could, however, be inappropriate for the same person/people to make personal and business decisions on your behalf due to a potential conflict of interest.

You could consider making an LPA appointing certain attorneys to manage your personal assets and others to manage your business assets. Still, this approach could lead to confusion regarding the scope of the different attorney's powers.

You can make more than one LPA, so we'd recommend you make one for your personal affairs and another to cover your business affairs.

To ensure clarity and avoid confusion, each LPA should contain specific instructions limiting the scope of the attorneys' powers. The respective attorneys will be clear about their powers and not infringe on each other's responsibilities and decision-making.

What happens if you don't have a business LPA in place?

If you ever lose the ability to make business decisions in the future and do not have a business LPA in place, you may need to apply to the Court of Protection to appoint a deputy who can act on your behalf.

This can be an expensive process, and there's no guarantee that the Court of Protection will select someone you would have chosen to act on your behalf. It's also a lengthy process and could take more than six months, leaving your business exposed to unnecessary risk.

Contact our solicitors

Our solicitors provide business owners with expert guidance and comprehensive support in preparing and utilising lasting powers of attorney.

For more information on business LPAs, please contact us at enquiries@solegal.co.uk