



Lasting Powers of Attorney for Business Owners

What is an LPA?

Lasting Powers of Attorney (“LPAs”) are often wrongly perceived as something to be considered only by the elderly or frail. Many younger people would not think that LPAs might be useful for them, yet, sadly, incapacity can occur as a result of an accident, sports injury, surgery, medication or illness. In such an event and in the absence of an LPA, an application might have to be made to the Court of Protection for a Court deputy to be appointed to manage their finances and property. However, most people would prefer to nominate in advance who should look after their affairs for them and protect their best interests; someone who understands what their choices and preferences would be. This can be done by signing LPAs for property and financial affairs and also for health and welfare.

Please see our separate information leaflet about LPAs for the conduct of an individual’s personal care, welfare and finance.

What is a Business LPA?

Complications can arise if a business person who is a sole trader, a partner or a director becomes incapacitated through illness or accident. Even if they have made LPAs appointing someone to deal with their personal property and financial affairs, that person might be unsuitable or unable to manage the business at a time of crisis. Very much a case of horses for courses.

A Business Lasting Power of Attorney (“BLPA”) allows the donor to appoint an attorney to make decisions restricted to their business interests if they lack mental capacity and should be created in addition to the LPA for their personal affairs. The BLPA should appoint an attorney who is able to deal with company business and commercial matters and this might not be the same person whom the donor appoints to deal with their personal finances or make decisions about their health and welfare.

BLPAs should be seen as an extension of managing business interests and as a crucial part of business crisis management and reducing business risk. Business owners or directors are advised to create three separate LPAs – personal LPAs to deal with Financial matters and to deal with personal welfare matters and a separate BLPA to manage their business interests.

“Don’t leave
your future to
chance”





Why make a separate Business LPA?

If an individual loses mental capacity, they are legally unable to manage their affairs. If they do not have an LPA, then an application to the Court of Protection (“COP”) seeking the appointment of a deputy may be necessary. Applications to the COP take six to seven months to complete and are expensive. During this time, there would be no one available who could lawfully make financial decisions or run the business on that person’s behalf until the deputy is appointed.

Without a BLPA it may prove impossible to keep the business going and to:

- pay staff, suppliers and bills
- hire staff and conduct staff disciplinary processes
- order new stock and supplies
- complete unfinished transactions and orders
- enter into new contracts
- settle taxes and NI payments

Further, professional standards and compliance may be overlooked, property or commercial transactions could be affected, or vital deadlines might be missed resulting in allegations of negligence or breach of contract. All of these are likely to significantly impede the day-to-day running of the business and, in some cases, may threaten its very existence as staff, clients, customers and suppliers lose faith.

Even where bank accounts are jointly held in the names of business partners or directors, the bank may freeze the account if a partner or director

loses capacity to deal with their financial affairs. In any event, the loss of mental capacity by a joint account holder usually terminates the assumed authority of that person for the account to continue to operate and the bank can freeze the account to protect the now vulnerable adult. If there is an overdraft, the possibility of the bank freezing the account is greater.

Following such an event the business may become exposed to failure or winding up. For a sole trader, the bank account is likely to be inaccessible on the loss of mental capacity and the authority of any other signatories to the account would end.

Reducing Risk

By having a BLPA in place, the business owner may ensure that someone whom they trust and who understands their particular business will be able to continue the day-to-day running of the business on their behalf. An attorney would have every authority needed to keep things going.

In many instances, it will not be appropriate for the same person to make both personal financial decisions and business decisions on behalf of the donor. There might be a conflict of interest. In addition, an attorney who takes on the management of a donor’s business interests without the requisite competency, understanding or skills, may find themselves subject to a claim against them due to their unsuitability to act as an attorney.

Next Steps

If you are a business owner or company director, contact the Private Client Team at Mander Hadley for further advice.

Meet our Private Client Team



David Webb
Director



Caroline Dobson
Associate Director



Roger Pascall
Consultant



Linsey Graham
CILEx Probate Practitioner



Rachel Gadsden
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