

BUSINESS POWERS OF ATTORNEY

You may be familiar with Lasting Powers of Attorney (LPAs) as something that a relative may have in relation to their personal affairs. However, have you given much thought to what would happen to your business affairs if you were incapacitated?

Physical or mental incapacity can affect any of us and often without warning. A skiing accident or being run down by the proverbial bus can render us in a position where we are unable to manage our affairs in the way that we would normally expect. In these circumstances, who is running the business?

Depending on the legal structure of the business, who can make decisions or take actions on your behalf may not be the people that you would necessarily want.

Sole Traders

If you are a sole trader, with no partners or directors who could carry on the business in your absence, then it is particularly important for you to draw up a Lasting Power of Attorney to appoint someone to manage the business, its bank accounts, purchase stock and pay any invoices. Would you prefer a family member or a professional to undertake this role? Ideally, it should be someone with the expertise to run your business, which may not be a family member. You might even consider appointing a trusted member of staff.

Partnerships

If as a business owner you are in a partnership, then it is important to check the partnership agreement to see what provision is made in the event of incapacity. If there is no such provision or you don't have a written partnership agreement, then the worst-case scenario is that an application can be made to Court to dissolve the partnership. An attorney appointed under a finance LPA (and in conjunction with a properly worded provision in a partnership agreement) would be able to deal with your interest in the partnership in an interim period. Again, this would ensure that you can choose an attorney who understands the business and would be able to make good commercial decisions on your behalf.

Without a Lasting Power of Attorney, it would be necessary to apply to the Court of Protection for someone to be appointed as your deputy. This can be an expensive and time-consuming process and could cost your business a great deal in lost revenue. By putting in place a Power of Attorney then even if the unexpected happens, your business can continue without interruption.

Limited Companies – directors and shareholders

Companies are slightly different, and the first course of action would be to check the Company's governing documents - its Articles of Association or any Shareholders Agreement. Both those documents may contain provisions setting out the effect of a director becoming incapacitated, including automatic removal or sometimes a requirement to offer for sale any shares that are held by the individual. The position of director is a personal appointment with responsibilities that cannot be delegated. It is therefore not possible to appoint an attorney to make decisions for you in that capacity.

Your position as a shareholder will often carry with it voting rights and an attorney, if appointed, would usually be able to exercise those rights on your behalf (although again, reference will need to be made to the Articles and any Shareholders Agreement).

Whenever you are considering who to appoint as your business attorney, it is crucial to appoint someone who will understand the specific needs of the business. This may be someone entirely separate from the person you would wish to manage your personal affairs. For example, you may want a family member to manage your personal affairs and a professional to manage your business affairs. This can be dealt with quite easily by drawing up two separate LPAs, one to deal with your personal affairs and one for business finances.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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