

Why a Lasting Power of Attorney is a business essential

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When estate planning and will drafting, business owners often overlook the impact it may have on their business affairs. James McMullan highlights the issues that business owners need to consider.

What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document that appoints up to four people that you know and trust to manage your affairs should you lose mental capacity. There are two types of LPA: one for property and financial affairs; and one for health and welfare.

Here, we focus on the former and how it could help you futureproof your business.

It is important to sign an LPA and register it with the Office of the Public Guardian ([OPG](#)) whilst you have the mental capacity to understand its power and implications.

Why have an LPA?

If you lose mental capacity without having signed a valid LPA, it could create serious problems for your family and your business. Remember – family members do not automatically have the right to make decisions for a mentally incapacitated person. These rights can only be granted by a valid LPA. So, if no LPA is in place, your next of kin would have to apply to the [Court of Protection](#) for a deputyship order which can take up to 12 months to obtain.

As well as being expensive, the deputyship process carries a heavy administrative burden and many business decisions will have to be put on hold. Without someone to sign cheques, pay bills and make important management decisions the business may be unable to operate effectively.

Why have a business LPA?

Most people are unaware that you can appoint someone to act for you under a business LPA as well as a personal LPA. It may be appropriate to appoint different people to act under each power, depending on your circumstances and the type of business you operate. You should consider whether the person you want to be your business attorney has the relevant skills to manage your business effectively. Will the attorney be able to act in your best interests, or would a conflict of interests arise?

One thing that is often overlooked is how an LPA might affect the documents governing the constitution of your business.

- If you are a company director/shareholder, you must consider the articles of association of your business and/or any shareholders agreement.
- If your business is a partnership or LLP, you should consider the partnership or members agreement.

It is possible there will be provisions within these documents that impose specific restrictions preventing the appointment of an outsider from acting for you/your business.

If not already in place, you should consider putting in place an agreement between the shareholders/partners to dictate what should happen in the event of a key shareholder/partner's death or illness.

Business issues to consider when drafting your will

There are also important issues to think about when drafting your will. Can you gift your share of the business to family members or would that breach the company's constitution? Would your business partners be prepared

to carry on the business with your spouse or child in the event of your death or illness, or should they have the right to insist that your share is sold to the remaining owners? This of course applies equally to your business partners should one of them fall ill. A shareholders' agreement would address these issues and plan for such eventualities.

In short

- Don't underestimate the impact your will and estate planning will have on your business affairs
- A Lasting Power of Attorney (LPA) can mitigate many of the problems that arise when a business owner, director or shareholder loses mental capacity
- Most people are unaware that you can appoint someone to act for you under a business LPA as well as a personal LPA.

We can advise on other related issues, inheritance tax legislation and protective measures against LPA abuses.

If any of the issues in this article apply to you, contact [James McMullan](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

