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## **BUSINESS LASTING POWER OF ATTORNEY – INFORMATION FOR CLIENTS**

### **Walsh West Private Client Legal 2021**

What is a Business LPA?

**What is a lasting power of attorney?**

A lasting power of attorney (LPA) is a legal document through which you authorise a chosen person (an attorney) to make certain decisions on your behalf.

The decisions that you authorise your attorneys to make can be either in relation to your finances, for which an LPA for property and affairs will be created, or in relation to your personal life, where an LPA for personal welfare will be created.

An LPA is a very important document, as it ensures continuity in the management of your life and your finances, should you become unwell or lose the capacity to make decisions.

Perhaps you feel that an LPA is not necessary, and assume that family members can step in, when necessary, to make decisions. But this is not the case; family members do not have the automatic right to make decisions on your behalf.

#### **LPAs for business**

As a business owner, it's important to consider what would happen to your business if you were unable to make decisions. This may be if:

- you were abroad on holiday or for business
- you were to have an accident
- you were to have a medical condition that incapacitated you

In such circumstances, who will authorise the payment of bills, sign cheques, service a business loan or pay salaries? Don't assume that a family member or a business colleague will gain the authority to make these decisions on your behalf – this assumption could leave your business exposed to risk.

To protect your interests, and those of your business, you should consider making a business LPA.



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### **Is a business LPA right for me?**

A business LPA will be appropriate in most circumstances, but it's important to first consider the type of business you own:

#### **Sole trader**

If you are a sole trader, your business is not likely to have a separate legal entity from you. This means that appointing an attorney under a business LPA will be an effective way for you to make provision for the continuity of your business, in the event that you are incapacitated.

#### **Partnerships**

If you are a partner in a partnership that has several partners, check the terms of the partnership agreement. Some partnership agreements may already include provision for what would happen should one of the partners become incapacitated. If such a provision exists, it may already adequately provide for the continuity of the business, in which case, a business LPA wouldn't be necessary.

However, if you're in doubt about the provision made in the partnership agreement, or you feel that an LPA may be required, you should seek advice on the wording of the LPA, to ensure that it doesn't conflict with the provisions already made in the partnership agreement.

#### **Directors of companies: articles of association**

If you're a director of a company, check the company's articles of association. Very often, articles of association will provide for the termination of a director's appointment in the event that the director loses capacity. This is often done to protect the company's interests. If such a provision is not included in the articles of association, you may want to seek advice and consider including such a provision.

If you are the sole director of a small private company, the articles of association are not likely to simply terminate the director's appointment, or there would be no one else to continue running the company. In such circumstances, a business LPA would be appropriate.

### **Can you make an LPA covering your personal and business affairs?**

It may be possible to have just the one LPA appointing attorneys to manage your personal assets and your business assets. However, it may not be appropriate for the same person to make both personal and business decisions, due to a potential conflict of interests. You could consider making an LPA appointing certain attorneys to manage your personal assets, and others to manage your business assets. But bear in mind that this could create confusion regarding the scope of the attorneys' powers, and the Office of the Public Guardian is likely to reject the LPA.



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Fortunately, it's possible to make more than one LPA. You could consider making one for your personal affairs and a separate one for your business affairs. Often, people like to keep their business affairs separate from their personal affairs, so this option tends to appeal.

If you are considering making two LPAs, each should contain specific instructions limiting the scope of the attorneys' powers – for example, a personal LPA should specify that your attorney will have general power in relation to your personal affairs, except for the relevant business assets in respect of which you have executed a separate business LPA.

Your business LPA should contain specific instructions in this respect, too. Your attorneys will then be clear about their powers and will not encroach on each other's responsibilities and decisions.

### **What happens if I don't make a business LPA?**

If you're unable to make business decisions in the future, and have not made a business LPA, it may become necessary to make an application to the Court of Protection for the appointment of a deputy to act on your behalf. The process can be expensive, and there's no guarantee that the Court of Protection will choose someone you would have chosen. It could also take more than six months before a deputy is appointed, during which time your business may be vulnerable and at risk.

To avoid disruption, it should be part of any business owner's continuity plan and crisis management strategy to consider making a business LPA.

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For help and advice with Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at [welcome@walshwestcca.com](mailto:welcome@walshwestcca.com) or via our website [www.walshwestcca.com](http://www.walshwestcca.com)