

Lasting Powers of Attorney: Special considerations for business owners

A Lasting Power of Attorney lets you appoint someone to make decisions on your behalf. When you own a business, this can be especially useful. It can allow you to authorise trusted people to take over matters for you, perhaps if you will be unavailable for an extended period of time, or in the event that you lose the mental capacity to make decisions yourself.

This help guide focuses on making use of Lasting Powers of Attorney to protect your business. If you would like to know more about Lasting Powers of Attorney in general, our main [help guide](#) on the subject contains much more information.

Planning for the future of your business

Planning for different eventualities is all part of future-proofing your business. If you have the right preparations in place, you can maintain the smooth running of your business in even unexpected events.

Your long-term plans for your business might also include passing it on to the next generation or keeping continuity within a family-run business.

None of us want to think about losing our mental faculties. However, if this were to happen, it could have serious consequences on the running of a business. It is worth considering what might happen to your business if you were unable to run it and make legally binding decisions regarding it.

Lasting Powers of Attorney (LPAs) allow you to safeguard your business in these situations. Through the LPA, you can grant authority to your appointed people (your Attorneys) to act on your behalf and make decisions for you. It ensures that, if you cannot take care of the day-to-day running of the business, you will have someone whom you trust and with the relevant skills to carry on your role.

Property and Financial LPAs

Property and Financial LPAs are particularly relevant for business owners. They can allow your Attorneys to handle aspects of your financial affairs, such as:

- Buying and selling property on your behalf
- Discharging and collecting debts
- Controlling bank accounts
- Managing your investments

Unless you specify otherwise in its terms, a Property and Financial LPA can be used at any time by your Attorneys, upon your direction. This means that if, for example, you simply needed someone to make decisions for you whilst you were out of the country, you could ask your Attorneys to do so.

LPAs in different business structures

Depending on whether you are in business as a sole trader, partnership or limited company, the way in which your affairs can be managed by your Attorneys will differ.

Sole trader or partnership

If you are a sole trader, or in a partnership, one Property and Financial LPA to cover your personal and business finances may be sufficient for your needs. You should consider, however, whether the Attorneys you appoint will be able, and suited, to managing both your personal and business interests. If not, you may wish to make separate Property and Financial LPAs with different Attorneys to look after these different parts of your life.

Limited company

Limited companies are distinct legal entities, and this makes using an LPA to protect your interests within the company a bit more complicated.

For directors, the company's Articles of Association – which set out the basic management and administrative structure of the business – are likely to say that your appointment as a director will come to an end if you are unable to act because of accident or illness. It is not possible to delegate your functions as a director using an LPA.

However, it is likely that you will also be a shareholder in the business. If so, you should consider appointing Attorneys through a Property and Financial LPA, which is specifically drafted to cover business decisions. In this way, your Attorneys can use the voting rights of your shares on your behalf if you become unable to do this yourself.

Using your voting powers would enable your Attorneys to vote on many important business decisions, including, for example, the appointment of a new director to replace you.

In principle, a replacement director could even be one of your Attorneys, as long as this allowed the business to be properly managed and would not cause any conflicts of interest.

This ensures your continued representation in the company; your Attorneys will be familiar with your wishes and goals in relation to the business and will always be duty-bound to act in your best interest.

Professional Attorneys

It is possible to appoint a professional (such as a solicitor) as an Attorney in your LPA. This can be helpful as a way of supporting other Attorneys or can be done where you believe none of your friends or family would be suitable.

It might be especially suitable to appoint a solicitor as your Attorney if your business is a firm of solicitors

Roche Legal can offer professional Attorney services. Please [contact us](#) if you would like to discuss this further.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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