



BUSINESSLPA

Specialist in Lasting Power of Attorney for Business

keeping businesses flowing

RECENT CHANGES TO LEGISLATION

Due to two pieces of recent unrelated legislation it is now apparent that there is a new serious issue that affects many businesses in England and Wales.

All Limited Companies, partnerships, sole traders and some charities need to be aware and take the appropriate actions outlined below.

NEW LEGISLATION

The Mental Health (Discrimination) Act 2013).

The Mental Health (Discrimination) Act 2013 prevents companies and partnerships from removing a director or partner by reason of mental incapacity. Accordingly, a company or partnership could be left with a director or partner who is mentally incapable.

Equality Act 2010

The Equality Act 2010 prevents businesses from discriminating against directors or partners on grounds of disability including mental disability.

“The stark reality is that business can experience banks freezing business accounts, calling in loans, and the withdrawal of overdraft facilities - the trading lifeblood of the business”.

THE PROBLEM

Business owners need to consider what would happen to their businesses if they became ill, had a serious accident or lost mental capacity. Who would run the business? Would the business be able to continue to operate in your absence? There is also the issue of whether the bank would continue funding the business or even freeze the accounts of the business.

THE SOLUTION

All business owners should have a Business Lasting Power of Attorney in place. This gives one or more persons authority to make decisions on their behalf. A personal Lasting Power is unlikely to cover business matters.

WHY IS THIS NECESSARY?

Recent changes to legislation have made it more important than ever to have in place a Business Lasting Power of Attorney.

- It is used to be the case that if the director of a limited company became mentally incapable the model articles would entitle the other directors to remove that director.
- Partnership agreements often contain provisions entitling the other partners to remove a partner who is no longer mentally capable.
- The Mental Health (Discrimination) Act 2013 has changed the position so that directors and partners can no longer be removed simply because of mental incapacity.
- This means that the company or partnership could be left with a director or partner who is mentally incapable of performing their duties.
- The solution is for directors and partners to each have Business Lasting Power of Attorneys.

WHAT CAN HAPPEN IF THIS ADVICE IS DISREGARDED?

- No one is legally appointed to run your business or undertake your duties as a Director (other Directors cannot simply assume your role and accountabilities); equally nor can partners or relations (in the case of sole traders).
- Banks can and are freezing bank accounts, calling in loans and ceasing overdraft facilities.
- Business Owners/Directors can be held to have not exercised due diligence in not setting up an LPA by others, such as shareholders and 'sleeping partners'.

CASE LAW IS GROWING

IS THERE AN ALTERNATIVE? & WHAT HAPPENS IF AN LPA IS NOT IN PLACE AND MENTAL CAPACITY IS LOST?

- As with personal LPAs the only option for a business would be to place it at the mercy of the Court of Protection. (often referred to as 'The Secret Court').
- The Court of Protection would appoint a Deputy (often a professional Deputy) to run a donor's affairs pertaining to the business, which would not only be costly on an ongoing basis, but often can take months to set up (plenty of time to go under).
- This would be an ongoing situation that would probably only cease when the business stopped trading or was sold (if the Deputy agreed to such actions).
- This person could be a stranger to the business and would have no consideration for other people involved – just the person who has lost capacity.

SUMMARY

A Business LPA ensures that in advance of future unforeseen circumstances:

- Attorney(s) are appointed to act on your behalf.
- Attorneys will act on your instructions laid out in the document – always in your best interests and those of the business.
- Attorneys will be legally accountable for the decisions that they take.

Business Lasting Power of Attorney is just as essential as:

- Public Liability Insurance
- Professional Indemnity Insurance
- Keyman Insurance
- One big difference is that this a 'one off cost', not something paid/renewed annually

“The cost of deputyship can cost a business anywhere between £5k - £8k, plus ongoing charges”.

Presenting BusinessLPA

BusinessLPA is an established company that works specifically in the advise and application of Lasting Power of Attorney's to the commercial sector. Our experience in this market is underpinned by our relationship with our sister company; LPA made simple.

Our expertise and knowledge of this market has provided us with a deep understanding of the importance and relevance of providing Lasting Power of Attorneys' to a whole new corporate audience.

“This is a serious subject, and Case Law is Growing”.

Legislation is complicated, and we recognise the need for businesses to be advised from a body that have the business community at heart. Just like most insurances, we fully respect it may never be required, but the consequences and alternatives are more concerning than you may think.

Our team consists of leading experts from the financial planning and legal services professions. We are working with a number of business partners, including; independent financial companies, insurers, solicitors, accountants and also banks.

CONTACT

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EXAMPLE CASES CONDUCTED BY BUSINESS LPA

Mr L who is the senior partner in a Hertfordshire Wealth Management Partnership for which we amended the partnership agreement to comply with existing legislation.

Mrs B who is the MD of an Essex Funeral Directors Company. The articles required amendment by her solicitors who were unaware of the legislation.

Mr P who is the MD of a motor cycle retail company in Horsham West Sussex. Articles amendment by us.

Mr K who is a senior Partner in a Financial Services Partnership in Cambridgeshire, Partnership amendment by us.

Mr N who has an electrical distribution business in Yorkshire, articles amendment by us.

Mr P who is the MD and surgeon of a veterinary practice Ltd company in Buckinghamshire, articles have been amended by us.