

FORTUNE LAW

PLANNING FOR THE UNEXPECTED; LASTING POWER OF ATTORNEYS – THE NEW RULES

What if you had an accident on the way to work?

You walk out into the street behind a parked van and something hits you. Hard.

What if you hit the left side of your head?

What next?

What if you temporarily lost your mental faculties?

Your will is in place and recently updated, your credit card repayments are protected and your life insurance in place but have you made provisions for the smooth running of your business if you were out of action. Forget smooth, would your business run at all without you?

What if you couldn't manage your affairs?

Would your business survive WITHOUT YOU?

What is a lasting power of attorney or LPA?

Picture this. You have taken the big bold step of leaving the secure world of employment and ventured out solo into the terrifying yet exhilarating existence that is the start up.

An LPA is a legal document that allows you to appoint someone you trust as an 'attorney' to make decisions on your behalf. A court will treat those decisions or documents as if you had made them. It can be drawn up at any time while you have capacity, but has no legal standing until it is registered with the Office of the Public Guardian.

You have worked day and night sacrificing sleep and financial security, you have learnt how to draft a business plan and perhaps even charmed someone into investing in you, you have figured out to work both your new scanner and the fax machine, you have spent a small fortune on stationery but still balk at booking a well deserved holiday. Did someone say holiday?

A registered LPA can be used at any time, whether you have the mental ability to act for yourself or not. It is possible to create two types of LPA, one to deal with your personal welfare and one to deal with your property and affairs.

You are on your way to work with your cash flow worries tucked neatly into your back pocket and a confident smile on your face as you dash to the first of your steady stream of appointments for the day; your accountants, the bank manager, one carefully targeted supplier and two prospective clients.

When appointing someone it may be sensible to elect two attorneys to make sure your interests are safeguarded. Your decision should be based on how well you know and trust them and how well

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they look after their own financial affairs.

The application to register an LPA can be made at any time after you have made an LPA.

Once the LPA is registered it continues indefinitely and can be registered even after you lose capacity. This is one of its key benefits. With an ordinary power of attorney however, the power is cancelled or revoked if you lose capacity. Therefore if you are immobile but have full capacity then all is well but if you have temporarily lost your ability to direct others, then this power of attorney is of no use.

Other practical tips:

Ensure your regular essential payments such as salaries or rent, phone bills and general utilities are paid by direct debit or standing order.

Consider keyman insurance which can be a lifeline for a small business but often overlooked. The main point of this is to compensate a business for the incapacity or death of a key employee.

Action:

The definition of a successful business for a small business owner has often been said to be how well your business can run without you there freeing you up to do other things. There are countless decisions or actions that can't be taken without your authority. Only you know what these are. Spend some time this week thinking about how you can get your business into better shape for when

you are able and especially when you are not.

If you need further advice on how to put an LPA in place or a standard power of attorney or if you require advice on any other part of your business please call us. We would be happy to help.

PLEASE NOTE

From 1 October 2007 Enduring Powers of Attorney (EPA) are no longer capable of being made. Instead, they have been replaced with a revised type of power called a Lasting Power of Attorney (LPA). Properly executed EPAS made prior to 1 October 2007 will still be valid but may be revoked and replaced where relevant or required. The note above takes into account these changes.



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16th October 2007

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This firm is regulated by the Solicitors Regulation Authority

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Correct as of time of printing