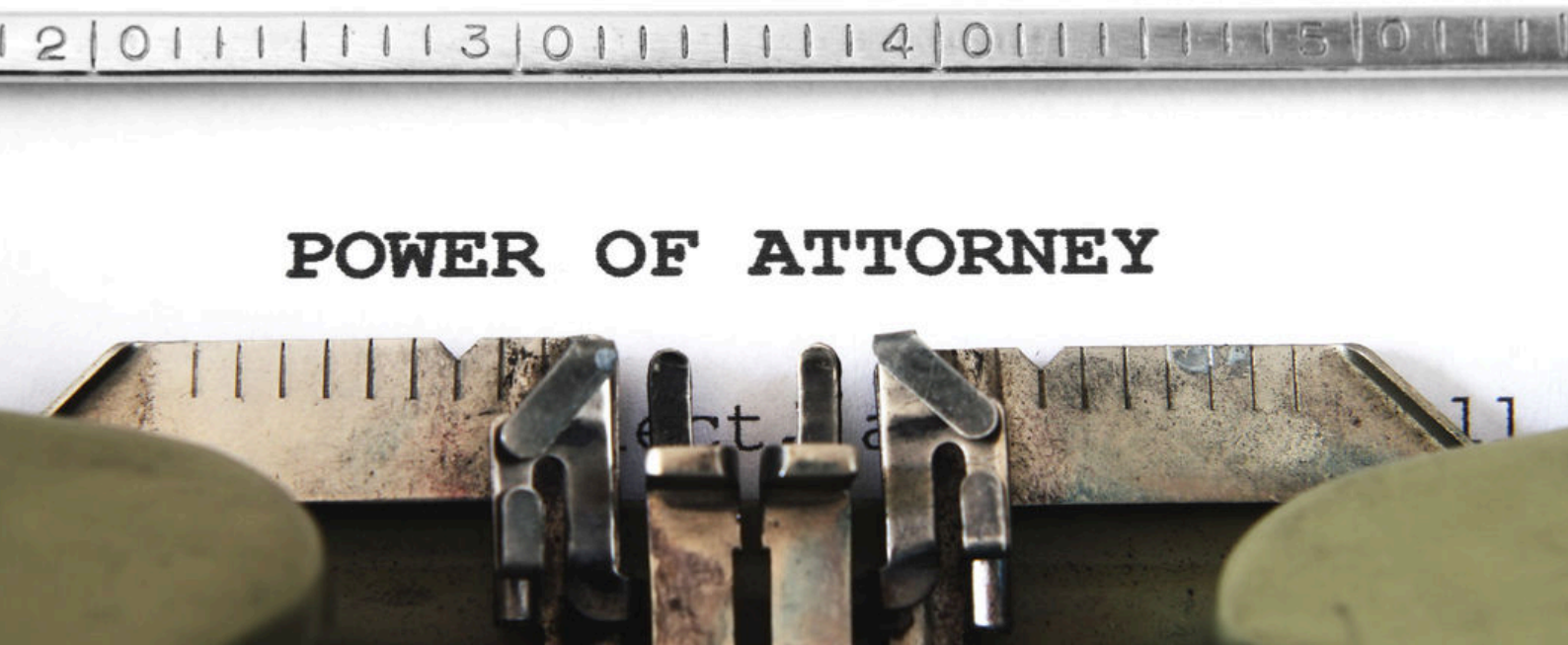


Understanding
BUSINESS LASTING
POWERS OF
ATTORNEY (LPAS)



POWER OF ATTORNEY

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Business LPA Brief

Business lasting powers of attorney (LPAs) allow the donor (the business owner/Director) to appoint a suitable attorney to make decisions concerning their business interests when they are unavailable or lack mental capacity.



important tip

"Contracts entered into by a person who had capacity but now lacks it may become unenforceable owing to their incapacity"

Many spend time identifying and preparing for probable risks, such as computer hacks, theft or even the death of the business owner. Few businesses however consider preparations for business decision-makers being incapacitated.

If there is no business LPA in place, certain risks arise. For instance, if one of the bank account signatories lacks capacity the bank can freeze or limit the account to protect the now vulnerable adult. If there is an overdraft, the possibility of the bank freezing the account is greater.

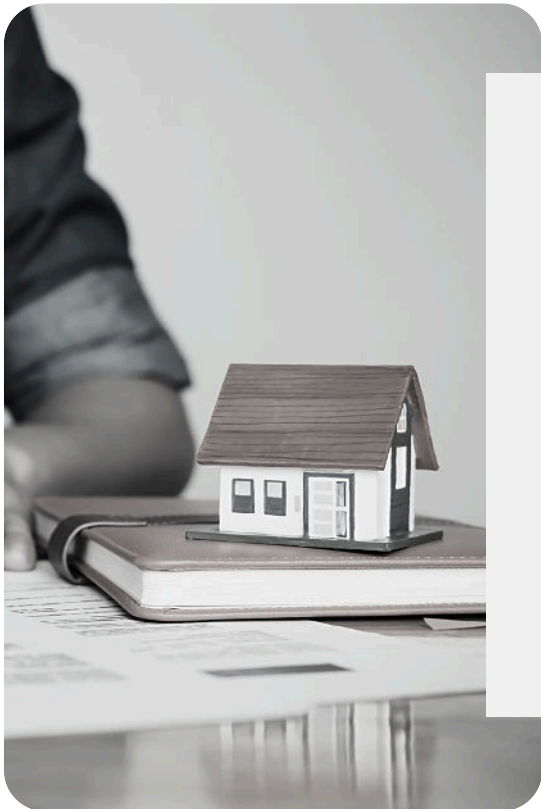
Contracts entered into by a person who had capacity but now lacks it may become unenforceable owing to their incapacity.

Paying creditors, employees or tax becomes difficult as does running the business generally with a businessperson who now lacks capacity. Investors may require their investments to be returned.



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 a business exposed to risk.

If there is no business LPA in place an application will have to be made to the Court of Protection to have a deputy appointed. This may take months or longer, during which time the business is exposed to a great deal of uncertainty and may not survive.



important tip

"Consideration should be given to a separate LPA appointing certain attorneys to manage personal assets, and a Business LPA to manage business assets"

Can you make an LPA covering both your Personal and Business affairs?

It is possible to have just the one LPA appointing attorneys to manage personal and business assets. However, it may not be appropriate.

Consideration should be given to a separate LPA appointing certain attorneys to manage personal assets, and a Business LPA to manage business assets. Fortunately, it's possible to make more than one LPA. Clients could consider making one for their personal affairs and a separate one for business affairs. Often, people like to keep their business affairs separate from their personal affairs, so this option tends to appeal. Equally ALL costs for sorting out affairs can be claimed as a business cost in FULL. Including claiming the VAT back.

If clients 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.

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

When can it be used?

A Business Lasting Power of Attorney can only be used when it is registered unless there are restrictions in place regarding mental capacity.

With no restrictions then the Attorneys can deal with all matters related to the named business, but please remember that any restrictions that are legally binding and must be followed.

Care must be taken to ensure that the restrictions can be followed.





Why you need a Partnership Agreement...

Partnerships are an informal way of running a business with one or more other people. There are fewer regulatory requirements than with limited companies, so it's often a good way to start.

However, partnerships come with significant risks. Unlike limited companies, your partnership isn't a separate legal entity, so any liability incurred by the business (including the other partner) falls on you personally.

Even if you've gone into partnership with family or long-term friends, a written contract will help avoid problems arising, as it will help you define what each partner is responsible for doing and how decisions can be made.



Additionally, if there are two of you and one of you leaves, or tragically dies, the partnership automatically dissolves.

If you have no written agreement between you, the default position is determined by the Partnership Act 1890, which is more than a little out of date! So if you want to take different amounts of profit or if only one of you owns property used by the business, it's essential to write this down or the opposite will be implied.

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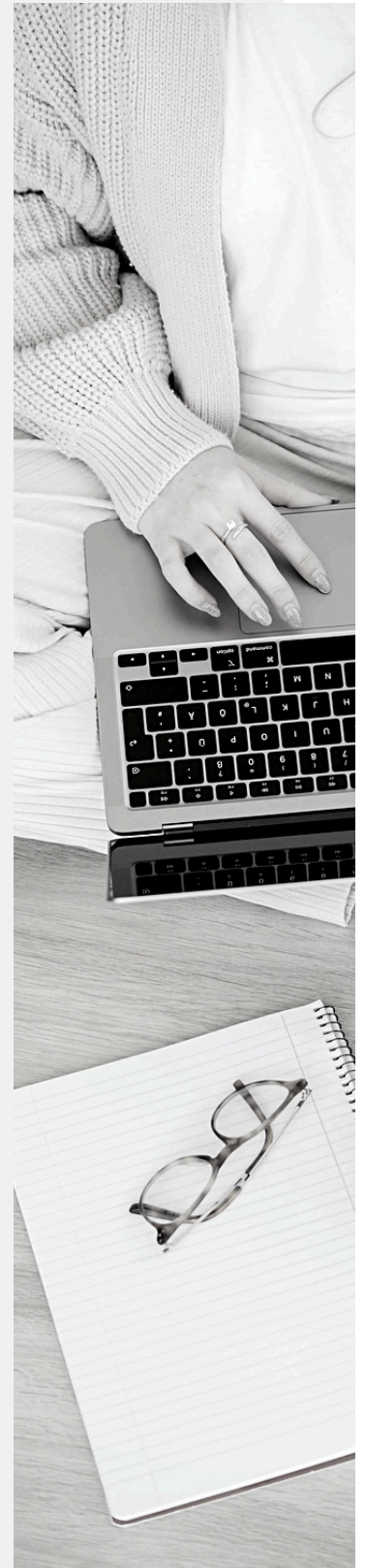
No-one likes to think the worst, but arguments, divorce, ill health and death are very real risks. Getting an agreement drawn up at the outset will be far less expensive than trying to settle a dispute later down the line.



Why you need a Shareholder Agreement...

When forming a limited company on Companies House, you'll legally have to adopt an agreement referred to as "Articles of Association". These are the company's constitution. Almost every business adopts the "Model" articles, as it's the easiest route to go down. However, no two businesses are the same, so these Articles are fairly useless and for any limited company with more than one owner, it's crucial to back these up with a written shareholder agreement.

You may be unaware of the differences between directors and shareholders. Essentially, directors run the business – their job is to make as much profit for the shareholders as possible. Shareholders own the business – they're the only ones entitled to take dividends. It's common in small businesses to be both directors and shareholders, and the shareholder agreement regulates the relationship between you.





If you've given shares to a family member for the main purpose of paying them dividends to reduce tax, and you're the one doing most of the work, then you've effectively given away a part of your business that you've worked so hard to build. If you were to divorce or fall out, you can specify in an agreement that the shares come back to you.

Shares are an asset so on death, they will generally pass to the beneficiaries under the will. However, this causes problems, as the remaining owner(s) are then left running the business with strangers. It can be written into the agreement that instead, the remaining shareholder(s) buy the shares from the beneficiaries, so they're left in control. It's also important to specify how the shares are to be valued.

A business cannot run if the shareholders are at loggerheads. Consider including deadlock provisions to help you resolve disputes. You may also wish to restrict the exiting party from setting up in competition and/or from stealing your customers.

Next Steps

If you would like to learn more about Business Lasting Powers of Attorney, Partnership or Shareholder Agreements get in touch with us...

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Thank you!

