



YOUR BUSINESS AND THE PROTECTION OF A POWER OF ATTORNEY

Business continuity is one of the key elements in business planning. The main objective is to ensure the efficient running of the business in the event of any disruption which could happen if you became incapable of running or making decisions about your business either due to physical or mental incapacity, or simply because of your personal circumstances or being out of the country.

What would you do if you couldn't make the day-to-day decisions?

Very few people know that once you are unable to manage your own affairs, there is no one else (not even your closest family member) that is automatically given the power or authority to deal with your affairs on your behalf. So, if any orders need to be fulfilled, wages paid, documents and cheque signing, having someone that has the authority to deal with these matters can be essential.

You can save time and avoid distress for your business by making a Lasting Power of Attorney and appointing somebody you trust to deal with your affairs whenever you need them to act on your behalf.

Lasting Power of Attorney

A Lasting Power of Attorney ("LPA") enables you to appoint someone (an "Attorney") to look after your financial affairs and property when you are unable to deal with them yourself. This could be because you are away, or you are ill or even become mentally incapable due to an injury or an illness such as Alzheimer's.

You can decide on who will deal with your affairs on your behalf and you can place restrictions on and give guidance to your Attorney(s) on how they should deal with your affairs. The LPA can be general and can allow your Attorney to act on your behalf in respect of all your property and financial affairs. Alternatively, you can restrict your Attorneys' powers or create specific LPAs which only deal with certain issues, such as your business affairs.



What decisions can the attorney make in respect of your financial affairs?

The decisions that your Attorney(s) can make include matters such as

- Buying, selling or maintaining property including insurance and repairs
- Accessing, opening and closing bank accounts;
- giving access to your financial information;
- investing your assets;
- dealing with your savings, benefits and tax affairs;
- Making gifts on your behalf to friends and relatives in specific circumstances etc.

Your Attorney(s) must act in your best interests and must follow a Code of Practice set up by the Mental Capacity Act 2005. Your Attorney must consider your wishes, beliefs and views you have expressed in the past. The views of your family and any other attorney you have appointed may also be considered. You are involved in all decisions as much as possible.

When can the attorney act?

An LPA relating to your financial affairs can be used as soon as it is registered with the Office of the Public Guardian, regardless of your mental capacity, provided there are no restrictions.

Whilst you are still mentally capable, you make decisions regarding your financial affairs yourself. Your appointed Attorney will carry out your wishes if you cannot carry them out yourself or if you instruct them to deal with some matters on your behalf, provided you have not restricted the power to be valid only if you lose mental capacity.

If you have lost the capacity to make the decisions yourself, your appointed Attorney will make and carry out the decisions on your behalf.

If you are still able to make decisions on your own behalf, you can revoke an LPA at any time and you do not need to give a reason.

Once the LPA is registered with the Office of the Public Guardian, your Attorney can act on your behalf when it is necessary (e.g. when you are ill or simply away temporarily) and you have a peace of mind that your Attorneys can continue acting on your behalf if you were to lose capacity to deal with your affairs.



What if I do not make an LPA and I am no longer able to deal with my affairs?

Without a Lasting Power of Attorney, an application would have to be made to the Court of Protection for someone to be appointed as your Deputy if you become unable to handle your own affairs. This process takes longer than obtaining a Lasting Power of Attorney and ultimately it is up to the Court as to who is appointed as your Deputy. There are a series of restrictions placed on which actions Deputies may perform and they will be supervised by the Court accordingly. As there is a constant link with the Court of Protection, the process is lengthier and in turns costlier.

Conclusion

We all like to think that we will be able to make all our own decisions during our lifetime. Unfortunately, in a lot of circumstances it is very difficult or sometimes even impossible to manage on our own. A Lasting Power of Attorney allows you to prepare for the future, but it is extremely important that it is made while you are capable of doing so otherwise it may be too late.