

Does my business need a Power of Attorney?

Protecting your business and family finances
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The Risks To Business Owners

Most businesses consider or insure against financial or physical risks (fire or flooding), but rarely protect a company if something should happen to the owner or key director. What happens to your business if you become incapacitated, either permanently or temporarily?

Do I need a Lasting Power of Attorney (LPA) to protect my business?

An LPA is a legal document that allows you to give a trusted individual(s) the power to make decisions for you if you don't have the capacity to do so. It provides reassurance that your business can still operate with minimal disruption should you become incapacitated.

An LPA will be suitable for most business owners, but it is important to consider the type of business you own.

An LPA may not be necessary if a partnership agreement already includes a provision in the event a partner becomes incapacitated, and for some companies there may be provision within the Articles of Association in the event a director loses capacity that will provide for the termination of a director.

If there is no such provision, our legal team can offer advice about the best way to protect your business. However, for sole traders and companies with sole directors, incapacitation can be extremely detrimental, and a Power of Attorney will help to protect your business and ensure business continuity.

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Sole Traders

The lack of a Power of Attorney can lead to chaos in managing business affairs during any incapacitation, with no one able to check bank accounts, pay invoices or make decisions. Mounting debt risks the potential for bankruptcy, and this could mean the end to your business unnecessarily.

Companies

Being the sole director of a company is not uncommon and if the sole director should become incapacitated, then it may be necessary to retire or remove the director from the board and appoint a replacement. This is achievable, but only if there are sufficient shareholders who can vote to approve the resolutions to do so.

However, if the same person is the main shareholder and director, no one would have the ability to appoint a new director because the main shareholder is incapable. Therefore, having an attorney who can exercise the shareholder rights on your behalf can be crucial to ensure the business is protected.

Personal and business finances

Your appointed attorney can manage your personal finances at the same time as dealing with your shareholder rights. However, this option may not be appropriate for you and could lead to conflicts of interest or confusion.

You can alternatively create separate Lasting Powers of Attorney to allow different people to manage your personal and business finances. Our legal team at Hegarty can advise which route will offer you the best protection and is most appropriate for your circumstances.

Can I have different attorneys for my business and personal finances?

In a word, yes. We can create you separate Lasting Powers of Attorney if you like, so you can have different people managing your personal finances to your business finances.

Who can act as my attorney?

You must trust your attorney and believe that they have the relevant skills to deal with your business, property or personal affairs. You can choose a family member, friend, or a professional attorney (such as a partner of Hegarty). An attorney must not be bankrupt or had bankruptcy proceedings issued against them or be subject to a debt relief order. You can also choose a replacement attorney if your appointed one is unable to act. If you are appointing more than one attorney, you must decide if you would like them to make decisions together or separately:

Jointly: all named attorneys must always act together, which can make it harder for attorneys to act incorrectly, however it can also cause issues if all attorneys are not contactable or available at the same time and can sometimes lead to conflict. The death or incapacity of an attorney can also render the LPA void.

Jointly and Severally: attorneys can act individually or together. This provides more flexibility but can also mean one attorney can act independently and without the other attorney's knowledge.

You can also appoint attorneys to act jointly when making some decisions, but state that only one attorney is needed for other specified decisions. Our team can explain the risks and benefits of each option to help you decide which is best for you and your business.

Your Health and Welfare

In addition to looking after your financial affairs you can also look after your health and welfare. This type of LPA allows your attorney to make decisions about matters such as medical treatment, your diet, where you live, who you see and giving or refusing consent to life-sustaining treatment decisions.

What happens if I don't have a Lasting Power of Attorney?

If you lose the capacity to be able to manage your business and affairs without a valid LPA, then your affairs will become the responsibility of the Court of Protection. This is an expensive and restrictive route which is best to avoid.

Business owners should be aware of the risks if there is no LPA in place and they are unable to make business decisions in the future. With nobody in charge, the business may become jeopardised, with the potential for contracts and insurance to be invalidated, and difficulties carrying out day to day business activities or paying employees and creditors.

A deputyship application can take many months and if the matter is contested (because your

family/friends cannot agree who ought to act) it could easily take years. If the court does not believe the person applying is a suitable deputy, they may appoint a solicitor or even the local authority. This delay and cost could be a disaster for your business.

Securing Your Legacy: The Importance of a Will for Small Businesses

For many, the running of your company takes precedence, but it is essential to plan ahead. The idea of drafting a Will might seem like a distant concern for many small business owners, however, overlooking this crucial aspect can leave a business vulnerable in the event of unexpected circumstances. Regardless of the size or nature of your enterprise, having a Will is essential for ensuring continuity and protecting the interests of your business, employees, and loved ones.

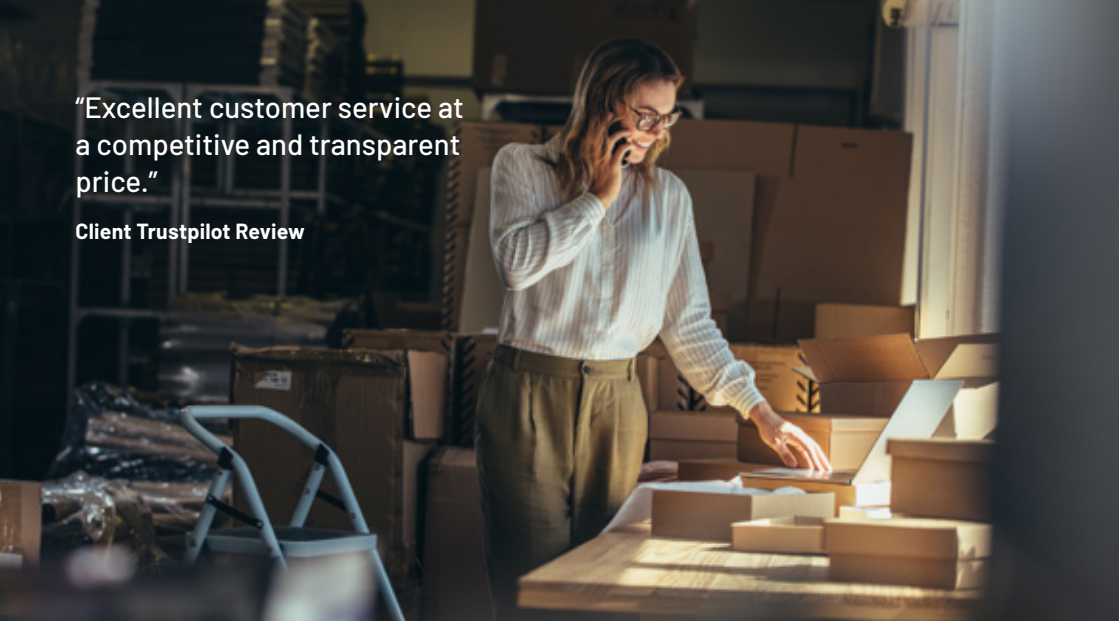
There are several reasons why small business owners need to prioritise creating a Will, including:

- 1. Business Continuity:** A Will acts as a roadmap, ensuring smooth control in the event of death outlining how assets are managed and distributed.



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2. **Asset Protection:** Without a Will, legal battles may dictate the fate of your business assets, risking disputes. A Will protects these interests and may prevent potential conflicts.
3. **Succession Planning:** Designating successors or outlining the transition process is vital. A will facilitates leadership changes, crucial for the business's long-term success, specifically for family or children who might or might not want to be involved in succeeding
4. **Employee Security:** Employees rely on business stability for their livelihoods. A Will reassures them about job security and fosters stability within the organisation.
5. **Tax Efficiency:** Proper estate planning reduces tax liabilities for heirs and beneficiaries. Structuring asset transfers strategically preserves more wealth for loved ones.
6. **Protection of Intellectual Property:** For businesses with patents or trademarks, a Will specifies how these assets are managed or transferred, ensuring continued protection.

7. **Peace of Mind:** Having a Will provides peace of mind, knowing that your business and assets will be managed according to your wishes, eliminating uncertainty and giving you control over your legacy.

Consult Hegarty to ensure your Will accurately reflects your intentions and secures a lasting legacy for your company.

“Kept up to date all the way through the Wills and LPA process, we found we could ask questions at any point and received clear and concise responses to them”

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Do I need to seek legal advice?

You do not have to seek legal advice – it is your choice. However an LPA is a powerful and important document and it is far more complex than the previous Enduring Power of Attorney system. We would recommend that anyone considering completing an LPA should seek appropriate professional advice to ensure both you and your business are protected.

How much does it cost?

Lasting Powers of Attorney

Our standard charge for a single LPA is £550+VAT. The cost to complete both types of LPA is £750+VAT.

If we are acting for a couple, our standard charge is £750+VAT for one type of LPA and £1100+VAT for both types of LPA.

Higher costs will arise if separate financial LPAs are required for business and personal financial matters.

In addition, the OPG charges a fee of £82 for registering each LPA.

We can provide you with a certified copy of the LPA at a current charge of £25+VAT (subject to a minimum order of 2). The OPG can supply certified copies at a cost of £35 per document.

Wills

Our standard charge for a single straightforward Will is £375+VAT. A straightforward Will is one that does not contain Asset Protection Trusts or Discretionary Trusts or require Inheritance Tax planning advice or require advice about the Will being challenged or contested.

If straightforward Wills are required for a married couple or civil partners then our standard charge is £650+VAT (i.e. where Wills are almost identical). If you would like an idea of the costs for more complex (i.e. not straightforward) Wills, please contact us for a quotation.

Why choose Hegarty?

For the past 50 years our team of highly skilled solicitors and legal advisors have provided expertise to businesses and individuals across a wide range of legal services. With our offices located in the heart of local towns, our clients know that we're on hand whenever they need our advice or support.

We provide a complete legal service to businesses, whether you are launching a new venture or are an established business. Our team of expert lawyers offer practical, effective advice, covering corporate law, employment law, commercial property, business disputes, later-life and succession planning.

We pride ourselves on being open and honest with our clients. Our lawyers will give you solid legal advice in plain-English tailored to your

needs and your legal adviser will let you know how much it will cost from the outset. Our clients value this and know they are in safe hands when they instruct us.

We are extremely proud of our excellent 5-star Trustpilot rating and that 95% of our clients would recommend our services.

“Excellent understanding of what my needs were. Very detailed explanation of the necessary processes”



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