

ESTATE & TAX PLANNING

November 2020



Lasting Power of Attorneys For Businesses

There has been much focus on Lasting Power of Attorney's (LPAs) recently, especially as they are important for those who have lost capacity and require people they trust to manage their affairs. There has been less talk about LPAs for businesses which can provide protection for a business owner, providing a safety net should something happen.

Without an LPA in place, the Court of Protection will need to appoint a deputy, which can take time, meaning a business could quickly end up without access to bank accounts or with the ability to make important decisions. It is also expensive for a deputy to be appointed, which can cause further stress to the business.

If a business LPA is in place, the nominated person, the attorney, will be able to temporarily take over the running of the businesses with the ability to deal with important decisions and sign contracts.

Although unlikely to be used, having an LPA in place can ensure that not only is the business kept running, those who rely on the business remaining stable, such as employees and suppliers, will have their roles secured.

An LPA does not mean that the attorney will remain permanently; they are required to "so far as reasonably practicable, permit and encourage the person to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them." This means

that a business owner will be involved in decision making.

A business LPA is created by completing an LPF1 form, which must be signed by a witness, the chosen attorney and a certificate provider. A certificate provider ensures that the decision has not been made whilst under pressure and that the person awarding the power understands the consequences.

The registration fee for business LPA with the Office of Public Guardian is currently £82, plus the professional fee for its preparation. These are a small charge compared to the potential cost to the business in the absence of an LPA.

An additional bonus for business owners is the cost of an LPA is allowable business expense. Whereas this is not the case when setting up an LPA for non-business purposes.

Survey finds that three-fifths of UK adults do not have a Will in place

Financial services firm Canada Life says that 59 per cent of adults in the UK have not made a Will.

This means that some 31 million people have not chosen who to leave their estate to.

Who doesn't have a Will?

The study found that 22 per cent of those without a Will are aged over 75. Of those aged between 65 and 74, 39 per cent have not written one.

The pandemic has had the effect of persuading younger people to start thinking about a Will, with 21 per cent of those aged 25 to 34 considering writing one and 12 per cent actually doing it. A larger group of 30 per cent updated their existing Wills.

Only 12 per cent of those questioned had a Lasting Power of Attorney in place prior to the Covid-19 outbreak, with 6 per cent saying that they had contacted a professional to put an LPA in place since the lockdowns began.

Similar figures applied to living Wills, specifying what decisions someone wants made when it comes to medical treatment. Before the lockdown, 13 per cent had a living Will, but a further 6 per cent had made a living Will during the lockdown period.

The advantages of making a Will

By leaving a Will, you can ensure that all of your estate and assets are left to those whom you want to benefit from them. If you should die without a Will, your estate will pass in accordance with the Rules of Intestacy. The Rules state that all of your personal belongings plus the first £270,000 of your estate will pass to your spouse, if you have one.

The remainder of your estate is then split into half, with one half going to your spouse and the remainder split equally between any children you may have. This can be problematic in the event of a second marriage, where children could lose out to a new spouse. A Will can easily remedy this, by leaving a new spouse a lifetime interest in an asset, with it ultimately passing to children.

When writing a Will, you can choose who you want to inherit and how much, as well as who you want to act as your executor to deal with the winding up of your estate. You may also want to leave property or money in trust, and you can specify this in your Will, as well as choosing trustees.

If you have children, you can select their guardians and leave money in trust for them until they come of age. If you do not leave a Will, then it will be for the court to decide with whom they should live.

By leaving a Will, you can be sure that your family will know your wishes for them after your death. A Will can also help your relatives avoid disagreements, particularly if you have discussed your decisions with them beforehand.

If you would like to discuss your Estate & Tax Planning, call David on 020 8670 0917 or email him at: david@marcus-bishop-associates.co.uk.