



## **The Business Owners Guide to Protecting Your Assets**

**Or .....**

## **Stop Giving Your Money Away - How Smart Business Owners Protect Their Families!**

The Importance Of A Tax Efficient Will  
Who Has Your Legal Authority?  
What Is A Trust & Why Are They So Important?  
What Really Happens Without A Will?  
There Are A Lot Of Reasons To Review A Will  
Why Do I Need A Partnership Agreement?



## Stop Giving Your Money Away - How Smart Business Owners Protect Their Families

**Many successful companies are family businesses, however this is not always the case. One of the main goals for many business owners is often to grow the business and protect it for the family. This is why it is important for those running businesses to have a Will in place, a Shareholders' Agreement (or Partnership Agreement) and a Lasting Power of Attorney to protect their family and the business in the event of incapacity or death.**

Putting a Will in place is important both for your personal estate and to protect your business interests. Your Will can be structured appropriately to capture the available reliefs from **Inheritance Tax** on your death including **Business Property Relief** in relation to qualifying business assets, i.e. your shares in the family business.

**The importance of capturing such a relief should not be understated.**

If your entire estate passes outright to your surviving spouse (or civil partner) on your death then Business Property Relief (BPR) is wasted. By structuring your Will appropriately, your business interests can be held on Trust under your Will to utilise the BPR.

If you have a business with other Shareholders, a Shareholders' Agreement is another essential protection mechanism for all businesses. One of the aims of a Shareholders' Agreement is to keep the control of the business in the hands of the remaining shareholders and to ensure that the family of the deceased shareholder is protected financially.

This is usually achieved by allowing the remaining shareholders to buy the shares of the deceased shareholder - and vice versa - by allowing the deceased shareholder's executors to sell those shares to the surviving shareholders, this is often referred to as a cross option agreement.

The shareholders' agreement can also be set up so as to avoid control of the deceased shareholder's shares passing to the family members of the deceased as this may disrupt the day-to-day management of the business – especially if they do not have any experience in the running of the business.

**It's long been recognised as good business practise for shareholders of a business to insure their own lives so that on their death, funds are available to the remaining shareholders to allow them to purchase the deceased shareholder's shares.**

These policies must be written in Trust to allow the sale and purchase to proceed in a tax-efficient manner and to protect the deceased shareholder's family. This money can then be used in conjunction with a Cross Option Agreement under the Shareholders' Agreement to buy back the deceased shareholder's shares from the deceased shareholder's executors.

Business owners should also consider what would happen to them and the business if they were to become incapacitated either permanently or temporarily. A Lasting Power of Attorney (LPA) enables an individual (known as the donor) to appoint an Attorney to make certain types of decision on the donor's behalf.

A Property & Financial Affairs LPA can be used to authorise the attorney to deal with the donor's property and finances, including aspects of the donor's business interests.

In some instances, individuals enter into separate LPAs – one for their personal property and financial affairs and one for their business interests. There are limitations in relation to an LPA for business interests. Where the donor is a company director, the appointment carries certain fiduciary duties which the individual, as a director, owes to the company and which he cannot delegate to an attorney appointed under LPA.

Company books should be reviewed to check whether there are any restrictions on an attorney acting on behalf of a shareholder to vote on company matters. We often find that companies have outdated articles of association which do not adequately protect the company or the shareholders in the event of incapacity.





## Protecting Your Business With A Lasting Power of Attorney

**As a business owner you'll know that running a successful business takes up so much of your time that it can become all-consuming. When everything is going well, why would you spend time thinking about the worst case scenario?**

Unfortunately many people in this position do not think about what would happen to their business if they became incapable of running or making important day-to-day decisions either through physical or mental incapacity, or if they were stranded abroad for any reason.

You may think you can rely on family, friends, or even employees, to take over the running of the business for you but this really isn't a satisfactory long-term solution. You've probably spent years building up your business and you need to know that the person left in charge will have the authority to make the best day-to-day decisions.

This is why we recommend that business owners protect themselves and their business by having a Lasting Power of Attorney ("LPA"). Not only will it save time, it'll help ensure that everything runs smoothly in your absence."

**A LPA enables you to appoint someone (an "Attorney") to look after your financial affairs if you were to become incapable of dealing with them yourself.**

You 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 business affairs.

If you are making an LPA in respect of your business affairs, it makes sense to appoint someone who is familiar with the business. For example, the partners in a business could appoint each other, or you could appoint someone in your family who knows the business well. You can also choose more than one Attorney who could act jointly or separately from each other. The choice is yours, but it's not one to be taken lightly.

An LPA relating to your financial affairs must be registered with the Office of the Public Guardian, regardless of your mental capacity in order for it to be valid. Once that's done, then you will have peace of mind that should anything happen to you your Attorney can act on your behalf.

If you were to become incapacitated, then without a LPA, an application would have to be made to the Court of Protection in order for someone to be appointed as your deputy. This process can take months and the costs involved are much higher than those involved in obtaining a Lasting Power of Attorney. In the meantime, who knows what will happen to your business?

It really makes so much sense to apply for an LPA now and never have to use it. Think of it as an insurance policy that could keep your business running successfully.



## What Is A Trust & Why Are They So Important?

Trusts can,

**Allow your beneficiaries to receive your gift without delay.**

**Allow you to choose you want to benefit**

**Allow you to change who should benefit**

### But They Don't;

Mean you give up control of your assets

Have to be expensive or difficult to set up with help from your adviser

### Could you use a Trust?

A Trust is a way of choosing who will receive the benefit of certain assets, without giving your beneficiaries full and immediate control over them. A Trust can also be created by your Will.

### Who Is Involved In Setting Up a Trust?

You, as the person creating the Trust, are known as the Settlor or Donor. The people who also manage the Trust are known as the Trustees.

In most cases, it's necessary to have at least two individual Trustees in place all the time and you must therefore choose additional Trustees to administer the Trust.

These people may need to deal with the Trust if you die so you need to choose them carefully. The beneficiaries are the people who you want to benefit from the Trust. If the Trustees break the terms of the Trust, the beneficiaries may take legal action against them. The beneficiaries are identified in the Trust document.

### What Are The Benefits?

Setting up a Trust can be easier than you think and can provide you and your family with real financial benefits.

### Can I Change My Beneficiaries?

The Finance Act of 2006 introduced significant changes affecting the way Trusts are treated for Inheritance Tax (IHT) purposes. Most of the Trusts we offer are Discretionary Trusts. This means the Trustees have the power to choose which of the discretionary beneficiaries to pay the Trust fund or gift to and in what shares.

With a Discretionary Trust, the Trustees can appoint benefits to anyone included as a discretionary beneficiary. The Trustees have a Power of Appointment which means they can appoint funds to anyone who falls within the definition of discretionary beneficiaries within the Trust.

The donor can also prepare a Letter of Wishes to guide the Trustees as to which discretionary beneficiaries they'd like to receive the benefits.

The Letter of Wishes isn't binding on the Trustees, so it's important that the Trustees are chosen carefully.

### Who Do I Appoint As Additional Trustee(s)?

As the word suggests, a Trustee should be someone you trust. For example, your partner, spouse, civil partner, another family member, a close friend. Trustees must be over 18 (16 in Scotland), mentally able and mustn't be bankrupt. Trustees should sign the Trust form to acknowledge their appointment. In accepting their appointment Trustees must carry out certain obligations and duties.

**40% is the amount of Inheritance Tax charged on your estate. £4.7 billion is the amount of Inheritance Tax receipts in the tax year 2015 /16, an increase of 22% compared to 14/15.**

Source: HM Revenue & Customs (July 2016)

### Trustees Responsibilities

Trustees must keep records, including Trust accounts, as they may need to prove they are managing any Trust funds properly. For example, records must be kept of any changes made to the investments in the Trust fund and any money paid or loaned to a beneficiary. We also recommend that proof is kept for any professional advice on investments etc.

### What Other Powers Do Trustees Have?

The law gives Trustees some powers. These include;

- The power to use income from the Trust for the education of maintenance of a beneficiary who is under the age of 18
- The power to give capital to a beneficiary before they become entitled to demand it
- The power to sell Trust property
- The power to give receipts
- The power to insure Trust property

Other more specific powers may be set out in the Trust form. The range of powers in each Trust can vary depending on the aims of the Trust. Trustees should make themselves familiar with the powers they have.

### The standard range gives the following powers;

- The power to exercise any option within any plan for life insurance
- The power to pay benefits to the parent or Guardian to any beneficiary who is not yet 18
- The power to lend money to any of the beneficiaries
- The power to borrow using the Trust fund as security

## Can I Change My Trustees?

The power of appointing or removing Trustees belongs to the Donor(s) while alive. If the donor wishes to remove a Trustee and that person is unwilling to sign the form, then the Donor can remove that person by sending a notice of removal in writing to the Trustees at the last known or usual address.

The Trustees being removed must then sign the necessary documentation to complete their removal. If the Trustee isn't available to sign the documentation the donor will need their own legal advice in order to remove them. If a Trustee retires or is replaced, a new Trustee may need to be appointed.

## Getting The Money When It's Needed Most

If an asset isn't under Trust, your personal representatives (the people you have asked to deal with your estate after you die) will need to get the appropriate 'Grant of Representation' before they can deal with the asset. 267,549 estates were issued a Grant of Representation in 2013/14, which accounts for about 47% of all deaths in that year. This process is known as 'Probate' in England, Wales and Northern Ireland or 'Confirmation' in Scotland.

Probate is the legal process of confirming who can deal with the estate of a person who has died before the assets of the estate can be distributed according to the terms of their Will. If someone dies without leaving a Will, they're said to have died 'Intestate'. Their estate will be divided according to the rules known as the 'Laws of Intestacy'.

This can be a long process and can take several months. In the meantime, your family could be suffering financial hardship following your death.

By placing insurance policies in Trust, the need for probate will be avoided as long as there's one surviving Trustee when you die. This is because the Trustees are the legal owners of the plan, and can deal with the Trust property immediately, making sure your chosen beneficiaries don't suffer financially after you die.

One of the most common reasons for taking out a protection plan is to provide for your family after you die. By writing the plan in Trust, you can make sure that the proceeds of the plan are paid to them without delay.

## Do I Have To Take Out A New Plan In Trust Or Can I Use An Existing One?

The majority of new protection plans can be written in Trust but changes to existing policies are not always possible, depending on your insurer. Business protection and Relevant Life Plans must be written in Trust from the start.

**However, you may want to review your plans to make sure they're still right for you. We can carry out a review of your plans and recommend appropriate Trusts for them.**

**Call 0208 088 1005 or email [enquiries@legacy-wills.co.uk](mailto:enquiries@legacy-wills.co.uk)**





## Why Should I Make A Will?

**Because everyone wants peace of mind.**

**Having a valid Will is something everyone needs and means that your wishes will be carried out exactly as you want them to be. A Will allows your financial affairs to be dealt with quickly preventing unnecessary financial hardship for your partner and family.**

Every day about 2,000 people die in the UK, but most of them leave their families with financial problems because they had not made a Will. Most people assume that when they die all their possessions will automatically pass to their surviving spouse.

However, many families have to face immediate financial hardship and under some circumstances they may even have to sell their home.

If you die without a valid Will then the Law lays down strict rules about who will receive your money and possessions - your 'estate'. These rules, the Law of Intestacy, are unlikely to agree with what you want to happen when you die.

It is just as important to have a Will if you are unmarried, or in a single sex relationship. If a partner dies without a Will then their estate automatically passes to their blood relatives, not to their partner.

### **Summary:**

#### **Not having a Will means:**

- **You will have no say about how your money and possessions are divided when you die.**
- **Your partner or family may suffer unnecessary financial hardship at a time of emotional distress.**
- **There may be Inheritance Tax to pay that could have been reduced or avoided.**
- **You will not be able to leave particular family heirlooms to those you wish to have them.**
- **You will have no say about who would look after any young children.**
- **Someone you have never met will deal with your affairs rather than trusted friends, relatives or other chosen Executors.**
- **You will not be able to give any special instructions or wishes about your funeral, burial or cremation.**
- **Any partners or family may not be able to carry on your business, and it could collapse.**





## Fourteen Good Reasons Why You Need To Review Your Will

### Have you experienced any of the following?

1. Are you moving home or buying an additional property?
2. The birth of a child or grandchild?
3. Have you, or are you likely to inherit money or property from someone else?
4. Has anyone mentioned in your Will – or have you - changed name(s)?
5. Do you have any Executors unable (due to ill health), unsuitable or unwilling to act?
6. Are you starting a new business or have you sold a business?
7. Are you about to marry or re-marry, divorce or separate?
8. Do you own a property in Europe? Do you want to leave it to beneficiaries of your choice – using UK legislation (via Trusts) instead of local law?
9. Have any of your beneficiaries/executors/trustees or guardians died or moved away?
10. Do you want to give to a specific charity?
11. Has the value of your Estate grown? Want to reduce your Inheritance Tax liability?
12. Do you need to change or exclude beneficiaries?
13. We recommend you review your Will every 2 to 3 years.
14. Your Will was written by a solicitor who just took your instructions – we can offer a more comprehensive service with full advice on how to protect your assets.

**Make sure you have the best protection for your beneficiaries, we can help you review your Will to make sure it's still right for you – no fee or obligation**

**Call 0208 088 1005 or email [enquiries@legacy-wills.co.uk](mailto:enquiries@legacy-wills.co.uk)**



## Partnership Agreements – What’s So Important?

**I’ve often been asked by business owners, “It is really necessary to have a formal Partnership Agreement in place”?**

### **The Answer Is Definitely Yes!**

If you have no Partnership Agreement in place then the Partnership Act of 1890 applies. The framework provided by the act is simple and straightforward but does not deal with the many complications of trading a century after it was passed. This act does not offer solutions to many of the problems that can arise and may not suit the way that you and your partners want to work together.

Basically, the agreement should set out the rules governing how the partnership operates, and should cover the main ‘What happens if ...’ situations. If there is no agreement, there will be a large element of uncertainty, and applying the underlying law, such as the Partnership Act 1890, may well lead to unwanted results.

It is usually best to have a partnership agreement drawn up professionally, but before you reach that stage you should think about exactly what you want the agreement to cover. In particular, you should consider:

### **Running the business**

- Partners’ duties
- Working hours and holidays
- Decision-making procedures
- Business premises
- Cars

### **Financial matters**

- Profit-sharing arrangements, and drawings on account
- Partnership capital (and interest arrangements)
- Banking and financial arrangements
- Accounting arrangements
- Making provision for tax payments

## Special circumstances

- Partner retirement procedures
- Death of a partner
- Providing for partners' retirements and dependants
- Disability of a partner
- Establishing the right to expel a partner
- Arbitration for unresolved disputes
- Business valuation procedures

**Make sure you have the best protection for your beneficiaries.**

**We can help you review your Will, Trust and Partnership or Shareholder agreement to make sure it's still right for you – no fee or obligation**

**Call now on 0208 088 1005 or email [enquiries@legacy-wills.co.uk](mailto:enquiries@legacy-wills.co.uk)**

