

Understanding Lasting Powers of Attorney

Elderly & Incapacity

What is a Power of Attorney?

A Power of Attorney is a document that enables you to authorise someone else to carry out tasks on your behalf.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney is one which continues beyond the loss of your mental capacity, so that the person appointed can act on your behalf even when you are no longer capable of managing your affairs.

A Lasting Power of Attorney ("LPA") is a very powerful document and it is important to understand how it works.

Is there more than one type?

Currently, there are two types of LPA. The first allows you to give authority to someone to deal with your property and financial affairs, which could include paying bills, selling a property or applying for benefits.

The second type of LPA allows the appointed person to make decisions about your health and welfare, which could include, for example, where you should live or, in the relevant circumstances, whether you should be given life sustaining treatment.

A separate LPA document is required for each: a "Lasting Power of Attorney for Property and Financial Affairs" and a "Lasting Power of Attorney for Health and Welfare".

Does the LPA need to be registered?

Yes. Before an LPA can be used, it must be registered with the Office of the Public Guardian.

Who should I appoint?

This is a very important decision, which you need to consider carefully. You have to decide who you would trust to act in your best interests. You can appoint more than one attorney, but appointing multiple attorneys can have practical difficulties.

The law allows you to appoint replacement attorneys in the event that your attorneys are unable to act for certain reasons. The forms provide opportunities for you to express any particular wishes you may have in connection with the appointments, as well as any guidance for your attorneys regarding the decision-making process.

Any other points to consider?

As part of the process of creating an LPA, you must nominate a "Certificate Provider", someone to certify that you have the mental capacity to make the document, that you understand its effect and are not being put under any undue pressure by anyone.

You can nominate someone to be notified when the document is to be registered with the Office of the Public Guardian. However, this is optional.

Both of these safeguards were introduced to reduce the risk of abuse of these powers.

Why would you consider making an LPA for Property and Financial Affairs?

Physical or mental incapacity can happen at any time through unexpected illness or accident, so you do not need to be elderly to consider making an LPA. Should the worst happen, creating an LPA will give you the reassurance of knowing that you have made arrangements for someone to take over at what might be a very difficult and distressing time for your family.

If you are suffering from mental incapacity and do not have an LPA, an application will need to be made to the Court of Protection to appoint a deputy to act for you, which can be complicated, costly and lengthy for your family.

An LPA for Property and Affairs can be put to use at any time, once registered. You do not need to have lost your mental capacity for it to come into effect, so it can be a useful method of having someone to act on your behalf when you are overseas or simply unavailable.

Why would you consider making an LPA for Health and Welfare?

If your mental capacity is lost, decisions may need to be made about your medical or general care and living arrangements. Social services or other institutions may become involved. Although your next of kin would normally be consulted in such circumstances, more formal authority may be required to make some decisions for you, so a legally appointed Health and Welfare attorney may be the answer.

A Health and Welfare LPA specifically includes an option to allow your attorneys to give or refuse consent to life sustaining treatment based on the preferences you make in the LPA.

Are there any dangers in making an LPA?

Because the authority created by an LPA endures beyond the loss of your mental capacity, the individuals you appoint as your attorneys will then have the power to take complete control of your money, savings, investments and property or to make all decisions concerning your welfare. Although they will be bound by the principles of the Mental Capacity Act 2005 and its Code of Practice, there is always a risk that the power may be abused in the wrong hands.

Seeking help and guidance

Creating one or more LPAs is an important choice and one that goes beyond the legal formalities. Seeking independent advice and guidance can provide the clarity and focus needed to make what are often challenging decisions.

As a team with many years' experience dealing with LPAs, we can help with these tough decisions and guide you through the practical pitfalls of the lengthy LPA documentation and registration process.