

LASTING POWERS OF ATTORNEY

Lasting Power of Attorney:

With an aging population, many clients don't just have concerns about what will happen to their assets on their death, but also what would happen during their lifetime if they were to lose the ability to make decisions for themselves. Mental incapacity can arise as a symptom of a long term condition such as dementia or as result of a stroke or accident. A Lasting Power of Attorney ('LPA') is a document which enables a person to appoint an Attorney to act for them in circumstances where they may lack the ability to make decisions for themselves.

There are two types of LPAs:-

1. **Health & Care Decisions** allows you to appoint an Attorney(s) to make decisions regarding your health care and welfare in the event that you lose the mental capacity to do so yourself. This type of LPA also allows you to give your Attorney(s) authority to give or refuse consent on your behalf to life sustaining treatment.
2. **Financial Decisions** allows your Attorney(s) to deal with your property and finances as you specify, including accessing your bank/building society accounts and selling your property if necessary. Under the terms of this kind of LPA your Attorney(s) can act for you at your direction whilst you have the ability to make decisions for yourself, or you can restrict the power so that your Attorney(s) can only act if you were to lose mental capacity in the future.

Your Attorney

As with any Power of Attorney, it is an important document and you should take care whom you appoint as an Attorney, as they should be trustworthy and have the appropriate skills to make the necessary decisions.

In the event that you appoint more than one Attorney their appointment can be made as follows:-

1. Jointly – in which case all Attorneys must make all decisions together, this can have practical implications.
2. Jointly and Severally – which means your Attorneys can make decisions together or separately.
3. Jointly for some decisions and Jointly and Severally for other decisions – this is a more complex form of document, advice should be taken as to the practicalities of appointing your Attorneys in this manner.

Contact

For further information please contact:

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Consistently recommended by clients

In the event that your Attorney(s) were to predecease you or themselves be unable to act when the time comes, the LPA allows you to appoint a substitute Attorney(s). You may also choose to appoint a successor to your Attorney, in case they die, or otherwise cannot act for you.

Completion of the LPA

The LPA is fully completed once the Donor, and Attorney(s) have signed the form and the necessary certificate is given by a Certificate Provider. The Certificate Provider is someone with the requisite skills who certifies that you understand the nature and implications of the LPA, and that you have not been pressurised by your Attorney(s) into completing the document. Thereafter the LPA will need to be registered with the Office of the Public Guardian before it can be used.

Existing Enduring Powers of Attorney

An Enduring Power of Attorney ('EPA') made before the 1st October 2007 is still valid. However, you cannot vary existing EPAs, but provided you retain your mental capacity, you will be able to revoke them. The procedure for registering EPAs on the Donor's mental incapacity continues to apply, this is slightly more complicated than the registration process for LPAs.

EPAs only relate to property and financial affairs, so if you want to appoint an Attorney to make welfare and medical decisions for you, you will need to execute a new health and care decisions LPA.

What happens if someone has lost mental capacity and they do not have an LPA?

If someone loses their mental capacity without having appointed an Attorney, then in relation to their property and financial affairs an application would need to be made to the Court of Protection to appoint someone to act as that person's Deputy. This is a time consuming and costly process, which would be most unwelcome at any time but is especially so when someone has lost their mental capacity and access to funding may need to be immediate.

With regards to the health and welfare of anyone who loses mental capacity, in the absence of an LPA, decisions would generally be made by the person who is next of kin in conjunction with the medical team and social workers. Having an LPA for Health and Care Decisions in place can mean that it is possible to avoid unnecessary delay and confusion and is of great importance when a person does not have immediate family.

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