

# lasting powers of attorney

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## property and finance affairs

Lasting Power of Attorneys (LPA's) were created by the Mental Capacity Act 2005. An LPA can be made by someone aged 18 or over (the Donor) to appoint another person or persons (the Attorney) to act on their behalf to assist them in relation to the management of their financial affairs and/or decisions in relation to their medical welfare.

### information and facts

- These can be used to make decisions in relation to the buying and selling of property; operating a Bank account, dealing with tax affairs, claiming benefits, pensions, and investments amongst other things.
- As your solicitor, we must be satisfied that on the balance of probabilities you, the donor, have the mental capacity to make an LPA. We may have to confirm the position with your GP or Consultant and you by signing our client care letter give us authority to do this unless you state in writing otherwise. If we are going to approach your GP we will inform you.
- We are required to complete a Certificate confirming you understand the purpose and scope of the LPA and that no undue pressure or fraud is involved in your decision to make an LPA. In order to do this we will require full details of your financial affairs and details of your connection with your chosen attorney(s).
- You must consider the appointment of your Attorneys very carefully. Appointing Attorneys means that they will have legal power to deal with your finances and property on your behalf. Whilst you are mentally capable they should take your instructions on the actions they carry out. However, if you become unable to make decisions then they will be responsible for acting in your best interests. LPA's are therefore open to abuse if your Attorneys do not observe their duties in this respect. If there are regular family conflicts, or if you have substantial assets invested in complex investments you must consider whether your Attorneys are able to act responsibly, impartially and in your best interests.
- The choice of Attorney is your decision but you must make sure they are absolutely trustworthy. If you chose to appoint a sole attorney then the risk of abuse is greater and you may therefore consider a joint appointment is more advisable.
- You can appoint more than one attorney. In addition you can give restricted powers to one attorney (for example, to deal only with your bank accounts) and other restricted powers to your other attorney.
- Further you can appoint your attorneys so that they must act jointly on all matters, jointly on some matters or so that they can independently of each other in relation to all or some matters.
- In relation to a joint appointment the LPA will terminate if any one of the jointly appointed Attorneys dies, disclaims, or becomes bankrupt, or lacks capacity. If you have appointed your Spouse or Civil Partner and you subsequently divorce them or enter into a dissolution of the civil partnership then the LPA will terminate in so far as that appointment is concerned.
- You can choose to appoint a replacement Attorney when you enter into the Deed to act if one of your first chosen Attorneys cannot continue to act. We will have asked you for details of any such person or persons you may wish to act as replacement Attorney.
- These reasons highlight the importance of choosing your Attorneys very carefully.

- You can place restrictions or conditions on your Attorneys. We will have discussed this with you during the consultation. If you chose to include any Restrictions, Conditions or Guidance this will appear in the draft LPA which we send to you for your approval.
- Your LPA cannot be used at all until it has been registered with the Office of the Public Guardian. There is currently a fee of £120 per LPA payable to the Court in addition to our fees. We recommend that the Power be registered as soon as possible after it has been signed and completed otherwise, when it is needed, your attorneys will not be able to use it for some weeks until they have gone through the registration. Once registered a Property and Affairs LPA can be used whilst the donor still has mental capacity, unless you specifically say that it cannot. However, just because a P&F LPA has been registered with the Court does not mean that it has to be used and you can, if you wish, carry on administering your own affairs without relying on your attorneys for as long as you wish or are able to.
- As advised, you can chose to name up to 5 people to be notified when an application to register the LPA is made but this cannot include the attorneys.
- We advise you to name at least one person to be notified on registration as this is an important safeguard if you lack capacity at the time of registration. You will be relying on this person to raise concerns if registration is not appropriate.

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- Your Attorney will have limited authority to make gifts from your money or property.
- The recipient of the gift must be an individual who is related or connected to you. This can include an attorney or a charity to which you have already made gifts in the past. A gift to charity can be made at any time in the year. A gift to an individual must be of a seasonal nature, for example, for a birthday. The value of the gift must be reasonable and proportionate bearing mind the amount of money and property that you own. You are not able to allow the Attorney to make gifts outside these parameters but you can however restrict or exclude the power to make gifts altogether. If you would like to do this please let us know.
- If you are a Trustee or you own property jointly with anybody else then please let us know because further advice may be required.

### your will

- We recommend that you authorise your solicitor to disclose the contents of your will to your attorney only if the solicitor deems it necessary. The reason for this is that it may prevent your attorney acting contrary to the intentions you have expressed in your will and provide valid guidance at a difficult time when you are unable to do so. We will have discussed with you whether you want such a power given to your solicitor in the LPA.