

Why Make a Lasting Power Of Attorney?

The benefits of drawing up a Will are widely recognised. In doing so, you make provision for the winding up of your affairs after death. This not only has advantages for those will find themselves administering your estate, but also gives you peace of mind, knowing that you have selected as Executors the individuals best suited for the role and have given them the necessary instructions.

If you haven't made a will and would like to know more [click here](#).

The Court of Protection has power to appoint people to manage your affairs, but the procedure can be costly and time-consuming. More importantly, you will have lost the right to choose who will have the responsibility for looking after your affairs at a time when it is vital that they are dealt with efficiently and sympathetically.

The better solution is, while mentally capable, to appoint someone to safeguard your interests and to act on your behalf if necessary. You can do this by preparing a Lasting Power of Attorney, also called an "LPA".

Lasting Powers of Attorney

At the time the power is given, however, you must be capable of understanding the nature and effect of the provisions in your LPA, for it to be valid.

There are two types of Lasting Powers of Attorney

1. A Property & Financial Affairs LPA gives someone you trust the authority to manage your property and finances while you can deal with your affairs and also after you are unable to deal with them due to lack of mental capacity, for example, pay bills on your behalf, speak with your Bank or utility companies.

2. A Health & Welfare LPA gives someone you trust the authority to make decisions about health and welfare matters only after you are unable to make the decisions yourself, for example, arrange support from social services; decide where you live.

It can also be extended to other decisions such as giving or refusing medical treatment such as life sustaining treatment.

LPA's are very flexible:

- You may appoint more than one attorney to act either jointly, that is always making decisions together or jointly and severally, which means they can make decisions together and separately.
- You can appointment replacement attorneys.
- You can place restrictions or conditions on the scope of what the attorneys can do for you
- You can give your attorneys guidance
- You can revoke the LPA's at any time whilst you are mentally capable

A professional attorney, such as a solicitor or an accountant, is entitled to make a reasonable charge for his or her services, but a specific authority to do so by way of a charging clause is a matter of good practice.

The Attorney's Duties

When you appoint an attorney under an LPA it can only be used once it has been registered with the Office of the Public Guardian. Your attorneys cannot simply do whatever they like. They must follow the principles of the Mental Capacity Act 2005.

Key Principles

There are five key principles in the Act:

- Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

You can view a full copy of the Mental Capacity Act 2005 on the Office of Public Guardian website.

The LPA's must be registered with the Court before they can be used.

There is a fee to be paid when applying for registration of the LPA. Once the LPA for Property and Finances has been registered, the attorneys have the power to deal with your affairs, however, it does not stop you from continuing to manage your own affairs whilst you have the mental capacity to do so. However, the Health & Welfare LPA cannot be used until you lack mental capacity.

Before the Court will register the LPA's it requires you to tell up to five friends or relatives to give them the opportunity to object or raise any concerns. This provides an important safeguard.

Certificate Provider

The Court requires you to discuss your decision to make a Lasting Power of Attorney with your Certificate Provider (ie someone who has known you for more than 2 years or a professional) to confirm your understanding of the document and its implications and that you have made decisions freely.

Your Solicitor's Role

The primary role of a solicitor advising you about an LPA is to ensure that you understand just what is involved and arrange for it to be registered on behalf of your attorney. If you wish, you may appoint a professional adviser to be your attorney, although we would recommend you also appoint a trustworthy friend or relation to deal with your affairs on a day-to-day basis.

IMPORTANT NOTE: This summary applies to English Lasting Powers of Attorney granted after 1st October 2007 and not automatically revoked by mental incapacity. Different rules apply in Scotland.

If you would like to discuss this in more detail as it relates to your situation, please give us a CALL NOW and ask to speak to one of our Wills & Probate team.

Or REQUEST A CALL BACK at a time convenient to you.

Disclaimer

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