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Lasting Powers of Attorney



What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document which enables you to choose someone, or multiple people (the Attorney(s)), to act on your behalf if you are unable to make decisions for yourself.

Depending on the type of LPA, your Attorney(s) may be able to make decisions in relation to your property and financial affairs, and/or your health and welfare if you lose mental capacity. If expressly authorised, it may also be that your Attorney(s) can act under the LPA while you still have mental capacity in relation to your property and financial affairs.

There are two types of LPA

Property and Financial Affairs LPA

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As set out above, the LPA can specify that your Attorney(s) have the ability to act while you still have capacity, but only on your instruction.

Health and Welfare LPA

This will authorise your Attorney(s) to make decisions on your behalf in relation to all personal welfare decisions, including health and care. Within the document, you will also elect whether or not your Attorney(s) should have the ability to decide whether you receive life-sustaining treatment.

Unlike the Property and Financial Affairs LPA, your Attorney(s) can only act under your Health and Welfare LPA when you lose the capacity to make the decisions yourself.

The advantages of a LPA

LPAs were introduced in 2007. Before LPAs, there were Enduring Powers of Attorney (EPAs). If you had an EPA made prior to 2007, this is still valid, but you may still want to put a LPA in place.

Here are the key differences between a LPA and an EPA:

- LPAs can cover health and welfare, whereas the scope of an EPA is limited to property and financial affairs.
- LPAs are generally registered with the Office of the Public Guardian (OPG) at the time they are executed, whereas EPAs cannot be registered until you start to lose mental capacity. This avoids additional stress and delay at what can already be a very difficult time.
- You can appoint a replacement Attorney(s) under a LPA, whereas this was not possible under an EPA.
- LPAs offer an opportunity to bring you up to date with current requirements – for example, your Attorney(s) cannot delegate the management of your investments to a discretionary manager, or even continue with an existing manager, unless you have given specific authority for this within your LPA or EPA.

Who should I appoint as my Attorney(s)?

A LPA is a powerful legal document. Who you appoint as your Attorney(s) will be able to make any decision you can make for yourself, unless otherwise stated in your LPA.

For this reason, it is very important to choose your Attorney(s) carefully. You should be confident that they will act in your best interests and follow any wishes you have expressed. You should also consider their competency to make decisions.

If you are appointing more than one Attorney, you will need to decide whether they should act jointly (meaning they must all act together), or jointly and severally (meaning they can act together or individually). A joint appointment can cause difficulties, particularly if one of your Attorneys dies as the whole appointment would then fail.

You should also consider how well your chosen Attorneys will work together.

Paying your Attorney(s)

An Attorney is entitled to be reimbursed for out-of-pocket expenses incurred while carrying out their duties. It is unusual to allow your Attorney(s) to charge for their services unless they are a professional Attorney (such as a solicitor or an accountant).

What are the safeguards?

A LPA can be made by anyone aged 18 or over, with the mental capacity to understand the implications of it. The compulsory safeguards to ensure that this is the case are therefore as follows:

- The requirement for someone (known as a certificate provider) to confirm that you understand the purpose of the LPA, and that you are not being pressured into making it.
- Your signature (together with that of your Attorney(s)) must be witnessed.
- The OPG will notify each person who is party to the LPA so that they have the opportunity to object to the registration before it goes through.

There are also optional safeguards:

- You can choose people (other than your Attorney(s)) to be notified before the LPA is registered. This gives them the opportunity to object to the registration if they have concerns.
- You can include restrictions or conditions in the LPA which your Attorney(s) must follow. For example, you can include a condition that your Attorney(s) must keep accounts to be submitted to someone of your choice, such as a family member or a professional.

Why choose TWM Solicitors?

Our Private Client team has the expertise available to offer the full range of private client services. Our aim is to provide a bespoke service and we will take the time to learn about every client's family and financial circumstances.

For further information about Lasting Powers of Attorney and our expertise in this area, please contact a member of our Private Client team.

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