

Lasting Powers of Attorney Your Questions Answered

There may come a time in your life when making decisions regarding your property and financial affairs or personal welfare becomes more difficult. In order to combat this problem you can formally appoint a friend, relative or professional to hold a lasting power of attorney which will allow them to make these decisions on your behalf.

What is a power of attorney?

A power of attorney is a legal document that allows you, the donor, to appoint someone, an attorney, to carry out decisions on your behalf. Lasting Powers of Attorney are a particular type of power designed to remain in force even if you lose mental capacity. There are two types of LPA, namely, property and affairs and personal welfare. Both powers need to be registered at the Court of Protection before they can be used.

What about Enduring Powers of Attorney?

The Mental Capacity Act 2005 implemented changes in respect of Powers of Attorney that can be prepared. From 1 October 2007 it was no longer possible to prepare Enduring Powers of Attorney (although existing Enduring Powers of Attorney prepared prior to this date will continue to be valid).

What if I already have an existing Enduring Power of Attorney?

Any Enduring Power of Attorney made before 1 October 2007 will continue to remain valid. It is possible to make a Lasting Power of Attorney in addition to any Enduring Power of Attorney you may already have to enable the attorney to make future decisions regarding personal welfare in addition to the power to make decisions about finances under the EPA.

What happens if I lose capacity before I make an LPA?

A person who has lost capacity is not able to appoint an Attorney to deal with any financial affairs, a close friend or relative will need to make an application to the Office of Public Guardian to be appointed as a Deputy for that person in order to carry out the necessary duties.

It is much less time consuming and costly to appoint an Attorney to manage your affairs before losing capacity, as an incapacitated person can no longer make a choice about who is to deal with their affairs.

What is a Property and affairs Lasting Power of Attorney for?

A property and affairs LPA can be used for anything from selling your house to managing your bank accounts and dealing with pensions and benefits. This can help with the practical aspects of daily life.

What is a Personal Welfare Lasting Power of Attorney for?

A personal welfare LPA allows your attorney to make decisions about your healthcare and welfare. This means that the attorney can refuse or accept treatment on your behalf and can decide whether you receive care in your home or move into residential housing, and perhaps make decisions as to life-sustaining treatment.

How many attorneys should I appoint?

It is advisable to appoint more than one attorney to ensure that your wishes are followed. You can state whether you wish them to make decisions together or whether you want them to be able to make decisions on their own as well as together. Factors such as where the attorneys live should be taken into account when deciding how they can act.

Who should be my attorneys?

As your attorneys will be able to make any decisions about your health care and welfare under a personal welfare LPA if you lack mental capacity, you should choose your attorneys extremely carefully. The same applies to those you wish to appoint under a property and affairs LPA given that the attorneys will have complete access to your finances.

When do LPAs become effective?

In order for both the property and affairs LPA and the personal welfare LPA to be used by your attorneys, the documents must be registered with the Office of Public Guardian. The LPA will be registered in a suitable database containing the details of all registered LPAs. You should be aware that once the document is registered certain pieces of information will be available to anyone who may make a search

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of the register. Initial information purely relating to the basic details of the LPA itself will only be available. However, people can make what will be known as a “second tier” search in order to obtain further information. However, in order to do this, the party making the search will need to satisfy the Office of Public Guardian as to the reasons they are making the search.

How do you register a lasting power of attorney?

An LPA can be registered at any time after it has been made. It is important to remember however that it cannot be used until it has been registered. Either the attorney or the donor can register the power at the Court of Protection for a fee (currently £150). Some donors are exempted from paying the fee or are entitled to a remission dependant on how much they earn. Proof of earnings have to be sent with the application for registration.

What happens once my LPA is registered?

Once the property and affairs LPA has been registered, your attorneys can start acting for you. You may therefore wish to include a restriction within the document to state that the LPA is only to be registered in the event that you lack mental capacity. A personal welfare LPA will only allow your attorney to act for you when you lack the mental capacity to make such decisions yourselves (for example, if you are suffering from dementia or are unconscious due to an accident).

What are the safeguards?

In order to ensure that you are entering into LPAs under your own free will without any pressure from your relatives or any other person, a certificate provider has to certify your LPA. Although you can choose an independent person to act as your certificate provider (subject to certain criteria), we would recommend that we act as your certificate provider at the time the document is prepared.

In addition to the above, you are encouraged to state people in the LPA who you would wish to be notified in the event that your document was ever registered.

Who is notified of the registration?

The donor can nominate a number of family members or friends who are to be informed of the registration and those named have to be given notice by the party who is registering the power of attorney. Those named then have 6 weeks to register any concerns with the Court of Protection if they feel that the power of attorney should not be registered or if they think the attorneys are acting inappropriately. If no objection is raised then the Court of Protection will register the power of attorney and send a sealed copy to the applicant.

What if I don't want to notify my family or friends?

Should you not wish to include people to be notified of the registration of your LPA, you must have two certificate providers certify the document.

How much do LPAs cost?

Once we have discussed your situation and requirements with you, we will be able to provide you with a fixed fee for preparing your LPA. At the time the document is registered with the Office of Public Guardian, their fees will be £150 for each part of the document registered (i.e. £300 if you register both your Personal Welfare and Property and Affairs LPAs).

What are the benefits of making a power of attorney?

By making your LPA you have control over your choice of attorneys, any conditions you wish to impose and who is to be notified of registration. Once you lose mental capacity these choices are taken out of your hands.

A person who has lost capacity is not allowed to make a power of attorney as they may not be aware of the consequences of their decision. This means that a relative or close friend will need to make an application to the Office of the Public Guardian to be appointed as a Deputy. This is a costly and extremely time consuming process and means that the donor will not have a say in who is appointed to make decisions on their behalf.

What do I do next to make a LPA?

Contact us and we will provide you with the questionnaire; meet with you to discuss your circumstances and requirements; and deal with completing an application if you so wish.

Please call us on 01284 767766 if you have any further queries and we will be happy to help.