



LASTING POWERS OF ATTORNEY

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What is a Power of Attorney?

It is a legal document in which you (the Donor) appoint someone else (the Attorney) to act on your behalf. This can either be:

- A General Power of Attorney or
- A Lasting Power of Attorney

A General Power of Attorney is invalid if you become mentally incapable of managing your affairs. Lasting Powers of Attorney (LPA) do not lapse in such circumstances. This leaflet concentrates on Lasting Powers of Attorney.

Why make a Lasting Power of Attorney?

Serious accident, illness or injury can strike anyone at any time, without warning. An LPA can only be made whilst you are fully aware of what you are doing and of the implications of creating such a document. Leaving it until 'tomorrow' because you feel fit and well may be too late!

Did you know even a child can appoint an Attorney

How do I choose an Attorney?

The choice is yours - who do you trust to deal with your financial affairs? An Attorney must be over 18 and cannot be a bankrupt person. He/she must be someone you trust. You can appoint one Attorney, two or more. If you have more than one Attorney they can act either

- independently: any one Attorney can sign documents on your behalf or
- together: all Attorneys must sign each document

- a mixture of both, but you will need to specify who can do what

What can an Attorney do?

Under a Financial Affairs LPA your Attorney can do most things on your behalf which you could do yourself such as signing pension slips, paying bills and signing contracts. You may put in restrictions on what your Attorney can do. There are various functions which an Attorney cannot carry out. For example he or she cannot make your Will nor decide where you are to live. Except in special circumstances he/she cannot sign your tax return. An Attorney can make small gifts on your behalf if you would normally have done so, such as Christmas or Birthday presents.

How Am I Protected as the Donor?

You should only choose as an Attorney someone whom you trust to deal properly with your financial affairs. If you have any doubts in the future or wish to change your attorney you can usually revoke the LPA. You can restrict what matters your Attorney can deal with if you wish. Most importantly your Attorney must act on your behalf at all times, and of course must not do anything which is unlawful. An Attorney must always consider your needs and wishes and where possible must involve you in any decisions taken on your behalf.

It is advisable to nominate one or more persons (other than the Attorneys) to be notified if the LPA is to be registered at a later date.

Is the Attorney Protected?

Yes provided he/she is not aware of the LPA having been revoked. Your Attorney is dealing with your funds, not their own, when paying bills on your behalf.

When is the LPA used?

All LPAs must be registered with the Office of the Public Guardian before being used. Many Donors may prefer (or need) to register the LPA immediately it is made. Registration does not mean the LPA must be used by the Attorney and the original can be safely stored in your Solicitor's strong room until it is needed. In some cases a Donor may prefer to delay registration whilst he/she is able to deal with their own affairs. Checks should be made to ensure no changes are needed to the LPA if your circumstances subsequently alter.

Registration

Either the Donor or the Attorney can apply for registration of the LPA. The LPA cannot be used until registration has been completed, which will take a minimum of 5 weeks (and possibly longer). Registration should therefore be applied for in advance of the need to use the LPA. An Attorney must give formal notice to any person the Donor has nominated to be advised of the registration application.

What is a Certificate Provider?

An LPA cannot be registered without a statement signed by a Certificate Provider confirming they believe the Donor is fully able to understand what the appointment of Attorneys means.

The Donor must also understand the reason for including restrictions and/or conditions. The Certificate provider cannot be an Attorney under the LPA or any other document appointing attorneys. A Solicitor can be a Certificate Provider, and will ask a number of

simple questions to establish the Donor has sufficient understanding to complete the LPA.

Someone who has known the Donor for more than 2 years may also be a Certificate Provider. Under certain circumstances two Certificate Providers are needed.

Personal Welfare LPAs

A separate LPA is needed if the Donor wishes an Attorney to make medical decisions on their behalf, or decisions about the Donor's care (including choice of care home, who may visit the Donor etc.) A Personal Welfare Attorney does not need to be the same as an attorney under a Financial Affairs LPA. Very great care is needed to ensure the correct provisions are included in a Personal Welfare LPA and we advise a Donor discusses these matters with their Doctor before proceeding.

What happens if I do not have an LPA?

If as a result of illness or injury you become mentally incapacitated all your financial affairs must be controlled through the Court of Protection who will appoint a Deputy to act on your behalf. You cannot choose your Deputy. A Court of Protection application is expensive and time consuming. Annual insurance and court fees are usually payable, and financial statements must be completed by the Deputy each year. The Court must approve non-routine expenses (such as property repair bills) before these can be paid.

Although not everyone who makes a Lasting Power of Attorney will use one, the relatively low costs (from £250 plus VAT for legal fees together with £150 Court Registration fee) and

simplicity outweigh the potential difficulties and expenses of a Court of Protection Receivership.

The Cost

The time taken to prepare either Financial Affairs or Personal Welfare LPAs will vary considerably from one client to another ranging from 2 hours to 5+ hours work. It is important to remember that a Certificate Provider must confirm the Donor was seen without anyone else present (unless in exceptional cases). This means where both husband and wife prepare LPAs initial instructions may take place with both present, but each must be seen individually by the Certificate Provider.

A Lasting Power of Attorney is only designed to be used during your lifetime. It cannot replace your Will - at Larken & Co. we strongly advise clients to consider both LPAs and Wills to ensure their affairs are in order. If you would like to discuss either matter further, please contact, Mrs D K Ryan, Mrs K M Smith or Mrs C M P Watson on Newark (01636) 703333



This pamphlet is intended as a general guide only. Our advice should be sought on specific issues.