



## Lasting Powers of Attorney Explained

### What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document by which you appoint someone you trust (your Attorney) to make decisions on your behalf during your lifetime. An LPA remains valid even if you become mentally incapable of dealing with your own affairs e.g. through accident, illness or mental confusion.

There are two types of LPA, and you can choose whether to make one or both types:

A **Property and Affairs LPA** allows your Attorney to make any decisions that you could make about your property and financial affairs. This may include paying your bills and, potentially, selling your house. You can put restrictions and conditions on your Attorney's powers in the LPA if you wish.

A **Personal Welfare LPA** allows your Attorney to make decisions about your personal welfare, which may include giving or refusing consent to medical treatment. Decisions under a Personal Welfare LPA can only be made on your behalf when you lack the capacity to make them yourself.

### Why Should I Make a Lasting Power of Attorney?

Your spouse, Registered Civil Partner or 'next of kin' does not automatically have legal authority to handle your financial or personal affairs. You might ask them to do certain things, but if you become unable to give instructions, they will not have the authority to continue to handle your affairs or to make important decisions. If you have not made an LPA, they will have to apply to the Court of Protection for appointment as your Deputy.

The benefit of making an LPA now is that if at some stage in the future you suddenly become ill and cannot deal with your own affairs, your Attorney will be able to step in and look after everything for you until you recover. In order for the LPA to be valid, you must be capable of understanding the nature and effect of the LPA, so it needs to be made while you are still mentally alert.

### Who Can I Appoint as My Attorney?

Anyone over 18 who is not bankrupt can be an Attorney. It is vital that you have complete trust in your Attorney, as they will be able to make any decision about your property and finances and/or personal welfare that you could make, even, in the case of property and finances, when you have the capacity to make them yourself.

You can choose as many Attorneys as you wish and you can decide whether they must all act together or whether they can act independently of each other. You can name replacements in case any of your Attorneys dies or is unable to act, and you can also name people to be notified when application is made to register your LPA. You can appoint different Attorneys in each LPA.

You can include in your LPA restrictions as to what your Attorney can do, for example you could restrict the Property and Affairs LPA so that your Attorney could only act for you if you were mentally incapable of managing your own financial affairs. Whether or not you include any restrictions, your Attorney has a duty to consult you about any decisions they make.

### **Do I Need to Register my LPA?**

An LPA cannot be used until it has been registered with the Office of the Public Guardian (OPG), whether or not you are still capable of dealing with your own affairs. Your LPA can be registered at any time, but the benefit of registering it immediately after it is made is that your Attorney can use it as soon as the need arises.

The application is by post and takes six weeks; the OPG's fee for registering each LPA is £120. If you are not applying for registration yourself, you will be notified, and given the opportunity to object, as will anybody whom you have asked to be notified.

Once registration has been completed, the OPG does not oversee the Attorney's actions but if notified of any problems e.g. fraud, the Court of Protection could revoke the LPA or sever part of its provisions.

### **What happens if I do not make an LPA?**

If you become mentally incapable of managing your financial affairs, somebody (usually a close relative) must apply to the Court of Protection for a 'Deputy' to be appointed to manage your financial affairs and make decisions on your behalf. The application must be supported by a medical certificate from your doctor and a detailed account of family and property. The procedure can take several months.

The Court charges £400 on application, £125 when the Order appointing the Deputy is made, and an annual administration fee of up to £800 depending on the level of supervision required. There are additional fees for further directions e.g. sale of property. Solicitors costs are either on a scale fixed by the Court or 'assessed' by the Court. The Court's fees are correct as at 1 October 2007.

After the Deputy has been appointed, the Court directs the Deputy how to manage your affairs. The costs, delay, and continued involvement of the Court means Deputyship is best avoided!

**More details are available upon request.**

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This guide is intended for general guidance only and should not be relied upon without detailed legal advice on your specific circumstances, which we will be pleased to provide.

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