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Practice Areas:

- Residential & Commercial Property
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LPAs

A guide to a Lasting Power of Attorney

An LPA is a legal document under which you give authority to someone else (the attorney) to manage your affairs. This guide aims to help you by explaining the process of making a LPA.



Types of LPA

There are two types of LPA and you can choose to make one type or both.

- **Property and Financial Affairs**
- **Health and Welfare**

Why make an LPA?

Appointing an attorney ensures that someone you have chosen and trust has the authority to manage your affairs if you are unable to do so.

This can be as a result of loss of mental capacity due to old age or dementia. It can also be due to an unexpected event earlier in life such as an accident or a stroke.

You can only appoint an attorney while you have the mental capacity to do so. Therefore, timely action is important.

What happens if you don't have an LPA?

If you become mentally incapacitated and do not have an LPA an application to the Court of Protection to appoint someone as a Deputy would need to be made. This process can be lengthy and can place unnecessary strain on family members.

Once appointed, the Deputy would look after your affairs and/or welfare but this could involve more administration on an ongoing basis than often is the case when an attorney is looking after your affairs and welfare. Making a LPA could avoid this. Whilst there is a cost

associated with making an LPA, it is less than the cost of an application to the Court of Protection to appoint a Deputy.

Safeguards

With a **Property and Financial Affairs LPA** you can place restrictions in the LPA on its use, e.g., that the attorney can act only if you become physically or mentally incapable. You can also specify the assets over which the attorney can have power rather than giving the power over all your assets, but if you are appointing the attorney in case you became incapable of managing your finances then it is better to give power in respect of all your assets.

A **Health and Welfare LPA** allows the attorney to make decisions regarding your personal welfare. This could include decisions about where and with whom you may live and your day to day care. The attorney can also decide whether or not to give consent to you receiving medical treatment, etc.

A Health and Welfare LPA can only be used when you are unable to make your own decisions.

Making an LPA

The procedure for making both types of LPA is similar. You can appoint more than one attorney and state whether the attorneys are to use the power jointly (all attorneys acting together) or individually (each attorney could act alone). The attorney should be someone you trust implicitly to avoid the risk of the power being abused.

Once you and your attorney(s) have signed the LPA it has to be registered with the Court of Protection before your attorney(s) can use the LPA. The Court of Protection charges a fee for registration but you may be eligible for a remission (50% discount) or exemption depending on your financial circumstances.

Types of decisions that can be made with an unrestricted Property and Financial Affairs LPA

- Buying or selling property (e.g. going into residential/nursing care or buying a smaller property)
- Opening, closing and operating bank and building society accounts
- Access to financial information such as claiming benefits, pensions etc.
- Dealing with tax affairs
- Paying of mortgage, rent and household expenses
- Insuring and maintaining your property
- Investing savings
- Paying for private medical care and residential or nursing home fees

Types of decisions that can be made with an unrestricted Health and Welfare LPA

- Where you should live and who you live with
- Your day to day care

- Consenting to/refusing medical treatment
- Assessments for a provision of community care services
- Complaints about your care and treatment

Enduring Powers of Attorney

Enduring Powers of Attorney (EPA) were replaced by LPAs in October 2007. If you made and signed an EPA before this date, it should still be valid. However, EPAs need to be registered with the Office of the Public Guardian at the stage the person is or is becoming mentally incapable to manage their own financial affairs. The registration process can be lengthy, taking between 8 – 10 weeks to register although it can be longer if there are any objections to the EPA being registered. This can cause difficulty if access to finances is required urgently. Another point to remember is that an EPA only covers financial decisions and not health and welfare decisions.

It is possible to revoke your EPA (if you have capacity) by signing a Deed of Revocation and you can replace it with an LPA for property and financial affairs and an LPA for your health and welfare.

How we can help you

To talk to us about how we can help you plan for the future, please call us and ask to speak to a member of our team.