

LASTING POWER OF ATTORNEY (LPA)

If a person loses the mental capacity to look after their own finances and affairs, the family will not have an automatic right to step in and act on their behalf. In the absence of making a Lasting Power of Attorney (LPA), it may be necessary for the family to make a costly and time-consuming application to the Court of Protection.

The LPA (which replaced Enduring Powers of Attorney (EPA) from 1 October 2007) provides a mechanism whereby the person wishing to make the LPA (Donor) can formally grant authority to one or more persons (Attorney(s)) to act on his or her behalf. For obvious reasons, the Donor must act whilst they still have the mental capacity to put an LPA in place.

Please note that our *client* will always be the Donor of the power and not the Attorney(s).

There are 2 types of LPA: the Property and Affairs LPA; and a Personal Welfare LPA. Alternatively, the Donor can make an ordinary power of attorney which may be suitable in certain circumstances (for which please see below).

An LPA is valid in England and Wales for actions assets located in England and Wales; there is no guarantee that an LPA will be accepted outside of England and Wales.

You have to be over the age of 18 to make an LPA.

There is no concept of joint LPAs (for instance, an attempt by a husband and wife to make a joint LPA). Each individual must make their own LPA.

TYPES OF POWER OF ATTORNEY

There are 3 types of power of attorney that an individual can put in place:

1. Ordinary Power of Attorney. An ordinary power of attorney may be used as a short term measure, (for instance whilst the Donor is out of the country), which allows the Attorney to act in respect of their affairs to the precise extent authorised by the Donor. However, an Ordinary Power of Attorney will cease to have any effect when the Donor becomes mentally incapable.
2. Property and Affairs LPA. If a Donor wishes to authorise a person or persons to deal with their property and affairs generally they should execute a Property and Affairs LPA. The Property and Affairs LPA where properly executed will survive the onset of mental incapacity. The type of decisions that may be made include: buying or selling property; operating bank accounts; accessing financial information including tax

affairs; paying bills; investing savings; applying for funding or allowances; dealing with the repayment of loans and other debts; and any other relevant provisions.

3. Personal Welfare LPA. If a Donor wishes to authorise a person or persons to make decisions concerning their health and welfare, they should execute a Personal Welfare LPA. The Personal Welfare LPA where properly executed will survive the onset of mental incapacity. The type of decisions that may be made include: consent to medical examination; arranging dental or optical treatment; dealing with the housing needs of the Donor; day-to-day care of the Donor; access to the personal records of the Donor; recreational activities of the Donor; and other relevant provisions.

If the Donor is concerned about both their property and financial affairs as well as their health and welfare affairs they should make both LPAs

PRESCRIBED STEPS AND OTHER KEY POINTS:

We will advise you on each of the actions that need to be taken but, in summary, the prescribed steps involved are:

1. The Donor must make a statement in the prescribed form confirming he or she has read the prescribed information; he or she intends to put an LPA in place; he or she has chosen named persons to act as

the Attorneys; and the Certificate Provider has been identified.

2. If the Donor wants to appoint more than one Attorney, the Donor must decide whether the Attorneys can act individually (ie on their own without reference to the other) or jointly (ie the Attorneys must agree before acting)
3. Only a person over the age of 18 can be appointed Attorney.
4. The Donor can specify a replacement Attorney if the original Attorney dies or is otherwise unable or incapable of acting.
5. An Attorney can claim reimbursement for out-of-pocket expenses whereas only a professional Attorney can charge for the services they provide.
6. It is possible for the Donor to introduce restrictions or conditions on the exercise of the Power. For instance, the Donor can specify that the Attorney is not entitled to act until he or she is no longer able to act for themselves. The Attorney can be required to keep detailed records of all of the decisions they take on behalf of the Donor. There are no specific forms of words. It is a matter for the Donor to consider on an individual basis the precise scope of any restrictions or conditions or not as the case may be.

7. The Attorney is not entitled to have access to the Donor's will unless the Donor has expressly granted the right to do so. An Attorney has no power to make a new will or codicil for the Donor. Should this become necessary in the opinion of the Attorney, the Attorney must make an application to the Court of Protection.
8. The Donor must specify a Named Person in the LPA. The Named Person is a person whom the Donor wishes to be notified if a registration of the LPA is to take place. It would be sensible for the Donor to name up to 5 Named Persons. Attorneys may not be counted as Named Persons.
9. The LPA must include a certificate to the effect that: the Donor understands the scope and purpose of the LPA; the Donor has not been put under pressure to make the LPA; and there are no reasons apparent to the Certificate Provider which would prevent the LPA being made. There are 2 types of certificate: a knowledge certificate; and a skills certificate. A knowledge certificate can be given by a person who has known the Donor for more than 2 years; a skills certificate can be given by a professional person with the requisite expertise such as a solicitor or healthcare professional. The Certificate Provider may not be a member of the Donor's family or an Attorney under the LPA. The Certificate Provider is required to confirm that he or she has discussed the contents of the LPA with the Donor without the Attorney(s) being present.
10. There are specified forms that must be used to create a Property and Affairs LPA or a Personal Welfare LPA. We can provide the relevant forms.
11. The LPA must be executed in the appropriate manner. Again, we will provide the necessary guidance.
12. Either form of LPA can only be used by the Attorney after it has been registered. We can provide the necessary guidance on the registration procedure.

COSTS

As will be appreciated from the above section, there are a number of detailed issues to be addressed and a considerable amount of form filling to be carried out. There are also registration fees to be paid.

Our fees range from £500 to £800 plus VAT. We can provide a more detailed quotation once we know the precise extent of the Donor's wishes. The fees we charge include, where necessary, visiting the Donor (where the Donor is unable to attend our offices) but does not include the registration fees.

FURTHER INFORMATION

If you require any further information or assistance please ring Susan Pollen on 01732 228809 or contact us by e-mail using the following e-mail address susan.pollen@dmblaw.co.uk