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Wills, Trusts & Probate

## LPA – How to look after your Assets when you are unable to



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## We often worry more about what happens to our assets on death than during our lifetime, but this is equally as important.

Due to medical advances and better lifestyles many of us are living longer, which means we need to consider who we wish to look after our finances and personal welfare when we are unable to do so either through physical or mental incapacity.

A Lasting Power of Attorney (LPA) is a legal document that enables you to appoint one or more people (attorneys) to make decisions on your behalf not only when you have capacity to make such decisions yourself, but also when you lose capacity to make those decisions.

If a person loses mental capacity without having appointed an attorney under an LPA (or revoked their enduring power of attorney), the only alternative way of establishing authority to make decisions on that person's behalf may be to apply to the Court of Protection for the appointment of a deputy.

This can be very a time-consuming and costly process. The Court is usually restrictive in the powers given to the deputy because, unlike an attorney (who has been personally chosen by the individual), a deputy is a Court appointed person who may be unknown to the individual and who has been appointed simply because there is no other way of managing the individual's affairs.

There are two types of LPA:

1. An LPA for property and financial affairs.
2. An LPA for health and welfare.

You can have either or both types of lasting power of attorney. We would recommend that you have both.

### An LPA for property and financial affairs

A property and financial affairs LPA enables one or more attorneys to act in relation to the ownership of assets and make financial decisions on your behalf. Examples of these decisions are:

- Making financial arrangements to fund nursing care.
- Carrying out banking activities and making payments from a bank account for household/medical bills.
- Dealing with the sale of a house or other assets.
- Authority for a professional to release a copy of your Will.

A property and financial affairs attorney will have authority to act once the form has been registered, but this authority can be postponed until capacity is lost, if the donor wishes.

### An LPA for health and welfare

A health and welfare lasting power of attorney enables one or more attorneys to make decisions about your care and well-being, but only if you have become unable to make decisions for yourself. Examples of health and welfare decisions are:

- Deciding whether care in a nursing home, or care at home is more suitable.
- Choosing the right nursing home.
- Giving instructions to carers about the daily routine of the donor.
- Making decisions about medical treatment.

Unlike a property and financial affairs attorney, a health and welfare attorney does not have authority to act while you remain capable of making decisions on health and welfare matters for yourself.

### Restrictions and conditions

A lasting power of attorney can include restrictions and conditions on the way an attorney may make decisions. It is also possible to specify whether, in the case of two or more attorneys being appointed, if they must act jointly or whether any one of them can act alone in carrying out the role.

You can also leave a letter of wishes with your power of attorney to provide general guidance as to how you wish them to manage your affairs. A letter of wishes is not binding but assists your attorneys in knowing how you would like them to act.

## Formalities

To ensure that powers of attorney are not misused there are safeguards to help protect you. You must sign the power and a person known as the 'certificate provider' must certify that you understand the nature and effect of the form. The attorneys must also sign a declaration and at least one person should be notified of your intention to register a power of attorney, this person has the opportunity to object to the registration if they believe there has been a misuse of the power.

## Procedure

The registration process can be broken down into the following steps:

- Completion of our questionnaire;
- Consultation as to restrictions and guidance to be included, if required;
- Drafting of the power(s) of attorney and related documentation including a letter of wishes;
- Once approved, arranging for all parties to sign the power(s);
- Notice will be served on the person to be notified of the application(s);
- Application made to register the power(s) of attorney to the Office of the Public Guardian;
- Power(s) of attorney registered; and
- The originals can be stored with us, free of charge.

We also provide on-going support and guidance to your attorney(s) as to their duties and responsibilities to your financial affairs and personal welfare.

The drafting of the power(s) of attorney can be turned around very quickly (within 24 hours) and the execution of the power is dependent upon the availability of all the parties. Once the application has been made to the Office of the Public Guardian the registration process takes around three months.

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