

Lasting Power of Attorney (LPA)

As of 1 October 2007, the previously known Enduring Power of Attorney (EPA) became unavailable and therefore one cannot now create such a document.

The new Mental Capacity Act 2005 was implemented, resulting in two new types of Attorney becoming available. These are as follows:

- a) Property and Financial Affairs LPA – under this document the donor (person giving the power) appoints one or more people (known as the attorney(s)) to make a decision on their behalf in relation to their property and affairs.
- b) Health & Welfare LPA – under this document the donor appoints one or more people to make decisions on their behalf in relation to their personal welfare matters.



Property & Financial Affairs

Attorneys appointed under a Property & Financial Affairs LPA can make any decision the donor could make about their property and finances, such as buying or selling property and investments and managing bank accounts.

Attorneys can only make gifts from the donor's monies to relatives or charities in accordance with the donor's previous habits. They cannot gift themselves, but can give gifts to those people that the donor might reasonably have benefited if available to do so i.e. family members.

The donor can also restrict what attorneys can do by stating in the LPA that certain things cannot be done and that certain helpful guidance be given to help the attorneys, for example "Do not sell my property until absolutely necessary".

Health & Welfare Matters

Personal welfare decisions are those that relate to the donor's welfare alone, such as medical treatment and decisions as to where the donor lives and with whom. It stretches as far as obtaining medical information and deciding what they wear, what they eat and how they spend their day etc.

The Mental Capacity Act 2005 provides that personal welfare attorneys cannot make any decisions where the donor has the capacity to do so themselves. This does not however give attorneys the power to make decisions relating to the refusing or giving of life sustaining treatment consent **unless** specifically written into the LPA. This document is subject to any updated advance directions given by the donor after making the LPA.

Consent to treatment under the Mental Health Act 1983 is **not** covered by this LPA, neither is any action taken by a donor that would lead to physically intending to restrain the donor.

In both cases, the donor must have a level of capacity to create an LPA. If this is not present, the Court of Protection and the Office of the Public Guardian must become involved under a Deputy application. Deputy applications are far more costly and time consuming to set up and can also be stressful and burdensome on family members.



Attorney Duties

The donor can appoint up to five attorneys in each LPA.

The attorneys must at all times act **in the best interests** of the donor. The attorneys should always try to consider the feelings and wishes of the donor when decision making, even if this means that the decision is not the most cost effective or most convenient; it must be in the best interests of the donor at all times.

The LPA cannot be used until it is registered with the Office of Public Guardian, and therefore if the donor wishes the attorneys to start using their power immediately, the necessary application documents should also be completed.

Summary

By creating LPA's you have peace of mind that if you lose capacity, you would know who is managing your affairs and that they would be fully aware of your wishes.

Once you have created an LPA, you are not tied to it if you change your mind. LPA's can be revoked easily, if not registered, by simply tearing it up and telling the attorneys appointed in it what you have done. If the LPA is registered, you should write to the Office of the Public Guardian explaining your intentions to revoke it. To do this you must still have capacity.

If you were to lose capacity and did not have LPA's in place, a deputy may need to be appointed, and this would lead to large annual charges which would come out of your estate. However, while there are the initial costs of creating and registering LPA's, there are no ongoing costs at all.

If you have any questions or queries or would like to proceed with this matter, please do not hesitate to contact us.