



Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) has to be made while the donor of the power has the mental capacity to do so. It is a document that appoints a relative or trusted person to look after your affairs if you are unable to do so or, if you still have the mental capacity but want your Attorney to look after your affairs.

There are two forms of LPA:

- Property and Affairs
- Personal Welfare

Most people make only one that is the LPA for property and affairs. It is that form of Attorney to which this leaflet relates.

We recommend that everyone over the age of 55 makes a LPA. It can be made at any time but can only be used when it is registered with the Office of the Public Guardian.

Your Attorney will be able to make decisions within the scope of the powers that you have given them and the decisions might include:-

- Buying or selling any property (land buildings or other assets) that you own.
- Opening / closing / operating any bank / building society or other accounts containing your funds.
- Claiming or receiving benefits and allowances / pensions etc on your behalf.
- Making Tax Returns.
- Paying household expenses.
- Paying for private medical care and residential care costs.
- Making gifts on your behalf.
- Purchasing any equipment or vehicle.
- Implementing Tax Planning or similar arrangements.

Therefore a LPA is a very powerful legal document and it is important to remember that the person you appoint as your Attorney will have the same control over your finances as you do.

The person you choose to be your Attorney must be someone who you trust to carry out your wishes and are comfortable that the decisions they make on your behalf would be the same as those you would have made yourself were you able to so.

Safeguards are built into a LPA these include:-

- The requirement that the LPA must be registered with the Office of the Public Guardian before use.
- You are required to identify someone to provide a Certificate confirming that you understand the purpose of a LPA and the scope of the powers you are giving your Attorneys.
- That certain named persons chosen by you are notified before the registration of the LPA.
- The requirement for the signatures of both yourself and your Attorney to be witnessed.

Your Attorney must have regard to the Code of Practice which provides guidance on the Mental Capacity Act and the Code makes it clear that the Attorneys must always act in your best interest.

The form of LPA is a prescribed form. It currently costs £120 to register the LPA.

It is advisable that you appoint more than one Attorney. In the LPA you have to specify whether you want to appoint them to act together, independently or together and independently. If you appoint two Attorneys who can act independently, should one of them die or become unfit to act, then the remaining Attorney can continue to act.

You can appoint a Trust Corporation (e.g. a Bank) to be your Attorney if you so wish.

The form also provides for a replacement Attorney if the person(s) you appoint are no longer able to do so or do not wish to make decisions on your behalf. For example, you may choose your spouse as Attorney and then choose your son or daughter as replacement Attorney in case your spouse should die or can no longer act on your behalf. You can choose as many replacement Attorneys as you like. You have to appoint a replacement Attorney at the time you make your LPA. Your replacement Attorney or Attorneys can replace any of your chosen Attorneys, when such a time or need arises. Anyone over the age of eighteen can be a replacement.

The LPA has a requirement that you choose named persons who you want to be notified when an application is made to register your LPA. This is another safeguard because listing people known as “named persons” allows you to decide at the time you make your LPA who you would like to be notified that registration of your LPA is taking place. Once notified, if the people you choose have concerns about the registration of your LPA (for example they feel that you have been put under pressure

to make it) they can object to the LPA being registered. If you do not choose a named person, then, as a further safeguard, you will have to select two certificate providers.

The certificate provider performs a vital role in the provision of the LPA documents as, without the certificate provider the LPA is not valid and cannot be registered. There are two types of certificate provider:-

A Category A certificate provider gives a knowledge certification. A knowledge based certificate provider is someone that you know personally and have done so for at least two years.

A Category B certificate provider is a skills certification. A skills certificate provider is someone who considers that they have relevant professional skills and expertise to certify your LPA. These include registered healthcare professionals (including GP), solicitor, barrister or advocate, registered social worker, independent mental capacity advocate. Skills based certificate providers are entitled to charge a fee for providing a certificate. We recommend anybody who is over the age of 70 or if there are any doubts about their mental capacity uses a skill based certificate provider.

A certificate provider cannot be:

- A member of the donor's family or the Attorneys family.
- A business partner or paid employee of the donor or the Attorneys.
- An Attorney appointed in this form or another LPA made by the donor.
- The owner of any care home in which the donor currently lives or a member of their family.
- A director or employee of any Trust Corporation.

If the certificate provider has any concerns about your understanding of the LPA or feels that you have been influenced or pressured into making it they can contact the Office of the Public Guardian and make them aware of their concerns.

If you would like to consider making a LPA we will be happy to discuss this with you further.

AUSTEN WHETHAM & GUEST

21 South Street
BRIDPORT
DT6 3NR

SRA No: 000463777

Tel: 01308 422236

Fax: 01308 427771

Email: info@awg-law.co.uk

www.awg-law.co.uk