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Lasting Power of Attorney

HOW TO
ORGANISE
AN LPA



What is an LPA?

A Lasting Power of Attorney (LPA) is the way to ensure that the people you trust will be able to take important decisions on your behalf if you become mentally or physically incapable of doing so for yourself.

While LPAs are most often used to deal with the affairs of the elderly, if they are prepared much earlier in life they will give the same protection in the event of incapacity as a result of illness or accident.

Replacing Enduring Powers of Attorney

LPAs replaced Enduring Powers of Attorney (EPAs) from the beginning of October 2007.

The basic difference between the two is that while an EPA only enables other people to act on your behalf in relation to financial and property matters, an LPA can also enable them to act in relation to health and welfare decisions.

Who takes responsibility?

Making an LPA does not restrict your right to control your affairs for as long as you feel able. The appointment of an Attorney means that there is someone to take over if, and when, you cannot cope. At any time you may ask your Attorney to take responsibility for various aspects of your affairs.

What do LPAs cover?

There are two types of LPA, a Property and Financial Affairs LPA and a Health and Welfare LPA.

Lasting Power of Attorney - property and financial affairs

A Property and Financial Affairs LPA gives your chosen Attorney(s) authority to deal with your property and finances as you specify.

Lasting Power of Attorney - health and welfare

A Health and Welfare LPA allows your chosen Attorney(s) to make welfare and health care decisions on your behalf, only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life-sustaining treatment.

Existing EPAs

If you have an existing EPA then this remains valid during your lifetime unless you revoke it, but you can no longer make a new one. You may wish to consider making a Health and Welfare LPA to complement your existing EPA.

From both a practical and financial point of view it makes sense for everyone to consider appointing an Attorney under an LPA before a problem arises. Once a person becomes unable to manage, it may be too late to make an LPA.

If you have already made a Will then an LPA will complement this and help to reassure both you and your family that you have made detailed plans for the future.

Choosing your attorneys

You will wish to choose people you trust completely and are over 18. An Attorney under a Property and Financial Affairs LPA should not be bankrupt. People usually choose their spouse and often their children, and other relatives or close friends.

An alternative is to choose a professional person such as a solicitor. If you appoint more than one person you will need to decide whether they are to act 'jointly' or 'jointly and severally'.

Jointly

Jointly means that they must all sign everything; this can help to ensure that the right decisions are made but may not always be practical depending on your choice of Attorneys.

Jointly and severally

Jointly and severally means that they can either act together or individually.

When does an LPA become active?

Your Attorney(s) will only be able to act once the LPA has been signed by you and your attorney(s), and certified by a suitable person that you have not been pressured into making the Power.

It also has to be registered with the Office of the Public Guardian before it can be used.

Limitations

An Attorney cannot, without authority from the Court of Protection, make a Will for you. You should ensure that you have an appropriate Will in place.

There are also strict rules governing gifts by attorneys. A specialist solicitor will be able to advise you.

No LPA or EPA?

If you lose the capacity to make a financial decision, and have not made an LPA or EPA, it may be necessary for an application to be made to the Court of Protection for an appropriate order to enable someone to act on your behalf. This can be costly, time consuming and stressful for family members.

Caring for others

If you know someone or find yourself caring for someone unable to deal with their own affairs it would be sensible for that person to make an LPA and you should mention this to them.

Generally speaking it is worth planning ahead. When someone becomes incapable of managing their affairs it can be a very difficult time both for them and their family and friends. However, only the person making the LPA can give instructions.

What should I do next?

You will need to consult a specialist Solicitor to get advice. This firm is a member of the national group of LawNet firms, committed to specialist training and quality service in the area of private client work, which includes LPAs.

Making an LPA through a LawNet Solicitor means that you will receive expert help and a quality service that represents value for money.

This booklet deals in general terms with a complex subject. Whilst we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation.

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Mercers Solicitors is one of the oldest law firms in the Thames Valley, having been established in Henley-on-Thames in 1827. Ever since then our client-focused approach has been helping generations of families to meet their legal goals.

We specialise in Private Client work including Lasting Powers of Attorney, Wills, Probate and Inheritance disputes, Residential Property and Litigation.



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