

Lasting Powers of Attorney

Overview

People who lack mental capacity need someone else to manage their legal, financial and health affairs. The Mental Capacity Act 2005 made provision for people to choose someone to manage not only their finances and property should they become incapable, but also to make health and welfare decisions on their behalf i.e. become their 'Attorney'. They will be able to do this through a Lasting Power of Attorney ("LPA"). LPAs replaced Enduring Powers of Attorney ("EPA") in 2007 when the Mental Capacity Act came into force.

Enduring Powers of Attorney

If you made an EPA before 1 October 2007 the EPA remains valid. If you start to lose the mental capacity to manage your finances, your Attorneys are under a duty to register your EPA with the Office of the Public Guardian ("OPG").

Property and Affairs LPA

You can make a Property and Affairs LPA to enable your Attorney to make decisions on your behalf about your property and affairs at a time when you are no longer able or lack the mental capacity to take those decisions yourself. This can include paying your bills or selling your house, subject to any restrictions or conditions you might have included. It can only be used once it has been registered at the OPG.

Health and Welfare LPA

A Health and Welfare LPA allows your Attorneys to make decisions on your behalf about your health and welfare e.g. where you live. It can include the power for the Attorney to give or refuse consent to a medical treatment if this power has been expressly given in the LPA. A Health and Welfare LPA can only be used once the form is registered at the OPG and you have become mentally incapable of making decisions about your welfare.

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Registering the LPA

The form must be registered at the OPG before it can be used. There is a fee of £130 for registering an LPA.



Your Attorneys

You can choose anyone you trust to act as your Attorney provided that they are over 18 and not bankrupt when they sign the form. You can appoint more than one person to act. You can also appoint replacement Attorneys. If you appoint more than one person, you can choose whether they can act together or together and independently. You can state that your Attorneys must act together for some decisions but for others they can act independently. Your Attorneys must follow the principles set out in the Mental Capacity Act when they are making decisions or acting on your behalf. They must always act in your best interests and consider your needs and wishes as far as possible. When possible, Attorneys should take all practical and appropriate steps to help you to make the particular decision. An Attorney must consider your past and present wishes.

The Attorneys must not take advantage of your position to gain any benefit for themselves, they must keep any entrusted money and property separate from their own and from that of other people and they must keep accounts of any dealings on your behalf.

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Attorneys must keep affairs relating to the LPA private unless otherwise stipulated on the LPA form or if it can be demonstrated that it is in your best interest to pass on the information to someone else. A person can refuse to act as an Attorney but if they agree to take on the responsibility, they immediately become subject to the duties of an attorney. Failure to comply can mean the LPA is cancelled and in some case the Attorney could be taken to Court on charges of fraud or negligence. The role carries with it power and responsibility and should not be entered into lightly.

The Certificate Provider

Before the LPA is valid, you must have a Certificate of Capacity drawn up by an independent third party called a Certificate Provider. The Certificate Provider could be your solicitor, your doctor or another independent person that you have known personally for at least two years. A family member, Attorney or relative of your Attorney cannot be a Certificate Provider. The prescribed form must be completed and signed by you in the presence of a witness and each Attorney must sign to confirm that they have read the explanatory information and understand the duties imposed upon them.

In addition, you should list one or more named persons who you wish to be notified of any application to register the LPA.



Please feel free to discuss your own position and concerns. Contact your nearest office on:

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E: enquiries@slatergordon.co.uk

W: www.slatergordon.co.uk/politelaw

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