

Lasting Powers of Attorney

Overview

A Lasting Power of Attorney (LPA) is a powerful legal document. Its purpose is for you to choose one or more people to act on your behalf should you begin to lose your ability to manage your personal affairs.

There are two types of Lasting Power of Attorney. One deals with your property and financial affairs, the other with health and welfare issues.

LPAs replaced Enduring Powers of Attorney ("EPA") in 2007 when the Mental Capacity Act 2005 came into force.



EPAs

If you made a valid EPA before 1 October 2007, it remains effective. If you begin to lose your mental capacity to manage your own financial affairs, your Attorneys are under a duty to register the EPA with the Office of the Public Guardian (the "OPG").

Our specialist team of advisors can assist with the registration process and also provide practical advice to ensure that your Attorneys understand their duties and obligations.

Property and Affairs LPA

This type of LPA provides your Attorneys with authority to make decisions regarding your property and financial affairs. It can be created to suit your circumstances and can include, if desired, restrictions to the legal authority granted to your Attorneys.

Your LPA is legally effective as soon as it is registered with the OPG. Whilst you remain mentally capable of making decisions, your Attorneys can only act with your consent.

Health and Welfare LPA

This type of LPA provides your Attorneys with authority to make decisions regarding personal issues, such as whether to give or refuse consent for medical treatment.

As with a Property and Affairs LPA, this type of LPA can be created to suit your circumstances and is legally effective as soon as it is registered with the OPG.

Registering the LPA

Both forms of LPA must be registered with the OPG before they can be used by your Attorneys. The OPG currently charge a non-refundable fee of £130 per document (May 2012) but this is subject to regular review.

Your Attorneys

You can choose any number of Attorneys to act on your behalf, provided they are aged 18 or over and not a declared Bankrupt at the time they sign the form. If you appoint more than one Attorney, you will have to choose whether they must act together at all times, or whether they can act independently of each other.

Each LPA form allows for Replacement Attorneys to be nominated in the event that your lead Attorneys cannot act for any reason.

Before making decisions on your behalf, each Attorney must understand and follow the principles, duties and regulations contained within the Mental Capacity Act and associated legislation. They must always act in your best interest and take due account of your needs.

Wherever possible, your Attorneys must take all practical steps to help you make a particular decision. They must also take account of your past actions and present wishes.

Your Attorneys must keep your money and property separate from their own affairs and from those of other people. They must keep full and accurate accounts of all income and expenditure.

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Your Certificate Provider

Both forms of LPA require an independent third party to confirm that you have the necessary mental capacity to create the document. This Certificate Provider could be your solicitor, your doctor or a close friend that you have known for at least two years.

The Certificate Provider is required to sign the LPA document before your Attorneys sign.



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Formalities

Each LPA created to suit your circumstances will then require you, your Certificate Provider and your Attorneys to sign before it can be sent to the OPG for registration.

It is important that all signatures are witnessed and are completed in the correct sequence. Otherwise, your LPA registration may be rejected by the OPG and would incur a further registration fee on re-submission.

Our Service

Our specialist advisors can provide practical and legal guidance throughout the LPA creation and registration procedure. We can guide you through the entire process and help you focus on the important aspects to ensure that each document suits your specific requirements. We can also help you understand the role of LPAs in a comprehensive estate plan.

Related Information

For further information on the following please get in contact with Slater & Gordon Lawyers:

- Powers of Attorney
- Mental Capacity Issues
- Estate Administration
- Wills

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

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