

Lasting Power of Attorney

Why make a Lasting Power of Attorney?

For a lot of people a General Power of Attorney (GPA) is inadequate as it is automatically revoked by the onset of mental incapacity – just the time when it is needed the most!

Although the Court of Protection has power to appoint people to manage your affairs, the procedure can be costly and time-consuming. More importantly, you will have lost the right to choose who will have the responsibility of looking after your affairs at a time when it is vital they are dealt with efficiently and sympathetically.

Until 1 October 2007, it was possible to appoint people (known as attorneys) to manage your affairs by an Enduring Power of Attorney (EPA). However, EPAs only enabled an attorney to deal with financial affairs, and it was felt by the government that the relatively simple procedures could result in the system being abused.

As a result, a more complex and robust system was introduced on 1st October 2007. The current system now enables attorneys to be appointed not only to look after a person's financial affairs, but also to make decisions relating to their health and welfare. These documents are called Lasting Powers of Attorney (LPA).

Mental Capacity Act 2005 (MCA 2005)

MCA 2005 provides a statutory framework to help those who lack capacity to take decisions and to enable those who have capacity to make provision in case they lose capacity.

A Code of Practice supports MCA 2005. It provides guidance and information to all those working under the rules. Certain categories of people are obliged to have regard to the Code of Practice. The categories of people include attorneys and those acting in a professional capacity, such as members of the Society of Trust & Estate Practitioners and Solicitors for the Elderly.

Property and Affairs LPA

In these a person can appoint attorneys to take decisions and do things including buying and selling a home, dealing with cash assets, dealing with tax matters, operating bank and building society accounts and claiming benefits. The Property and Affairs LPA is largely the same as an EPA made under the old rules.

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Personal Welfare LPA

Attorneys appointed under this document can take decisions and do things such as deciding where a person lives, what care they receive, consenting to or refusing medical treatment and day-to-day matters of diet and dress.

Provisions common to both forms

Although there are two separate forms, they contain a number of common provisions. These include statements to be completed setting out personal details, who the attorneys are to be and how they are to act together if more than one, and contact details of people to be notified on the application for registration.

The legislation introduced the need to have a 'certificate provider' on each form. The job of the certificate provider is to confirm that the person creating the LPA understands what they are signing that no one is forcing them to make the LPA. There are strict rules stating who can be the certificate provider.

On each form the attorneys must sign to confirm that they understand their duties and obligations.

Registration

Both types of LPA must be registered at the Office of the Public Guardian before they can be used by your attorneys. This process should normally take 5 to 6 weeks, although it can take longer if the Office of the Public Guardian is busy.