

## Lasting Powers of Attorney

It is essential for everyone, at any age, to consider what will happen if at some point in your life you are unable to manage your own affairs, whether through an accident or an illness. If this happens, you will need to rely heavily on someone else, be it a friend, family member or professional, and they need to be formally appointed to act on your behalf. This can be achieved by completing a Lasting Power of Attorney (“LPA”) which legally appoints someone you trust to make decisions for you. We call this person an Attorney.

There are two types of LPA:

**LPA – Financial Decisions** – this enables your Attorneys to make decisions about your financial affairs; for example how to manage your bank accounts, other investments and any property you own.

**LPA – Health and Care Decisions** – this enables your Attorneys to make decisions about your personal welfare, which could mean making a decision about which care home you will reside in, or whether you consent to life sustaining treatment (much like a Living Will or Advance Directive).

### ***Why should I have an LPA?***

In very simple terms, an LPA is similar to a Will. A Will deals with your property and affairs when you die, whereas an LPA deals with your property and affairs if you have lost mental capacity. You may have suffered brain damage in a car accident, or be dealing with the symptoms of Alzheimer’s. Either way you will require assistance to deal with your finances, and it would be preferable to choose who you would wish to manage your affairs.

If you lost mental capacity without having an LPA in place, any family member or close friend can apply to the Court of Protection to be appointed as your Deputy, which will likely take some months to complete and involve a £400 fee, possibly with some solicitors’ fees. A registered LPA could be used immediately, and lodged with the relevant banks and institutions to enable your Attorneys to act quickly, for instance to access the funds needed for secure private nursing care. This is even more important for decisions about your personal welfare, as those immediate decisions would be far better taken by an Attorney of your choosing, rather than social services or the Court.

### ***I already have an Enduring Power of Attorney (EPA). Do I need an LPA?***

An Enduring Power of Attorney only gives your Attorneys the power to deal with your property and financial affairs, it can not cover decisions to be made on account of your personal welfare so you may wish to supplement your existing EPA with a LPA for Health and Care Decisions. Please note

that, although your EPA can be used immediately upon execution, it must be registered with the Office of the Public Guardian ('OPG') once you lose your mental capacity.

### ***Who should I choose as my Attorney?***

Ideally you should choose more than one Attorney and they should be people that you trust. Remember you will be unable to oversee the Attorney's actions if you are mentally incapacitated. The LPA form enables you to appoint Attorneys jointly or severally, or to specify certain circumstances in which one or the other is applicable. You can also give guidance to your Attorneys to assist them with making decisions.

### ***When can the Lasting Power of Attorney be used?***

An LPA can be made at any time whilst you are mentally capable, but it cannot be used until it has been registered with the OPG. It can be registered at any point after it has been made, and can be registered either by you (the Donor) or your Attorney if you have lost mental capacity.

A registered LPA for Financial Decisions can be used at any time by your Attorneys whether you are mentally capable or not, thereby enabling your Attorneys to sign documents on your behalf if you are away on holiday for example, which can be very useful. However a LPA for Health and Care Decisions can only be used when you have lost the mental capacity to make those decisions for yourself.

### ***What protection do I have once I have given this power to my Attorneys?***

The form allows you to specify certain people to be informed when the form is sent to the OPG for registering. This is an additional safeguard to prevent any possible abuse of the Attorney's powers. Those people can then object to the registration (and therefore the use of the LPA) if they do not consider it to be appropriate.

Your Attorneys will need to keep accounts of your assets, income, spending and outgoings and have a duty to produce these to the OPG or the Court of Protection if they ask to see them.

The most important thing is to choose Attorneys that you trust. If you are struggling to find the right people to appoint then it may be appropriate to appoint a professional person such as an accountant or solicitor.

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This note only contains general guidance. If you would like to discuss a Lasting Power of Attorney and how it can help you or your family, please contact **Victoria Lee** on [Victoria@bbmlegal.co.uk](mailto:Victoria@bbmlegal.co.uk) or 01664 498 991 for confidential and practical advice.

