

# *Lasting powers of attorney*



HEWITSONS

**A Lasting Power of Attorney (LPA) is a new type of Power of Attorney which replaced the Enduring Power of Attorney (EPA) from 1 October 2007.**

The LPA is a legal document in which an individual appoints another person or persons (the Attorney) giving authority for decisions to be made on his or her behalf. The LPA is similar to an EPA in that it will remain in force after the donor becomes mentally incapable of managing his own affairs. Lasting Powers of Attorney are best made in good time and not put off until the onset of physical or mental incapacity when you may lack the mental capacity to sign one.

## **There are two types of LPAs:**

- *A Property and Affairs LPA which gives your Attorney authority to deal with your property and finances as you specify*
- *A Welfare LPA which allows your Attorney to make welfare and healthcare decisions on your behalf only when you lack mental capacity to do so yourself. This could also extend to giving or refusing consent to the continuation of life sustaining treatment*

## **We can guide you in making an LPA and provide helpful advice on:**

- *The implications of appointing Attorneys*
- *The issues to consider when deciding who to appoint*
- *The problems that can occur if you do not sign an LPA*

## **Attorney**

The LPA is an important document and care should be taken as to who you wish to appoint as Attorney. They should be trustworthy and have the appropriate skills to make the proposed decisions.

If you appoint more than one Attorney, you can appoint them so that they always act together (that is jointly) or together or separately (that is jointly and severally). With an LPA you can appoint them to act jointly for some things and jointly and severally for others. You can also choose to appoint a successor to your Attorney in case they die or otherwise cannot act for you.

## **Who can be my Attorney?**

An Attorney must be over 18 years of age and mentally capable of handling your property and finances. The Attorney can be a member of the family, a friend or a professional person.

## **What can my Attorney do?**

An Attorney can manage your financial affairs subject to any restrictions which you make in the LPA.

The Attorney can also make welfare decisions if you have made a Welfare LPA but this can only be done by your Attorney if you have lost mental capacity.

## When will my LPA come into effect?

It must be signed by you and your Attorney. A certificate then has to be provided from a person stating that you understand the nature and scope of the LPA and have not been put under undue pressure to make the LPA. The certificate also has to state that there has been no fraud or any other reason why you cannot make the LPA.

It must be registered before it can come into effect. Registration can be carried out immediately after it has been signed by you and your Attorney so that it becomes immediately available for use if it is required.

The alternative is for the LPA to be signed by you and your Attorney and for the certificate to be completed. It could then be registered if and when it is required. The disadvantage being that the LPA cannot be used until it has been registered, which can take up to a period of six weeks.

## The Registration Procedure

As mentioned, the LPA must be registered before it can be used. Notice of the registration needs to be given to the persons whom you have selected. Should you have stated that you do not wish anyone to be notified of the registration of your LPA then two certificates, as mentioned in the previous section, need to be completed.

## Can my LPA be cancelled?

The LPA can be cancelled at any time so long as you retain mental capacity to do so. An Attorney may resign but only after giving notice to you and to the office of the Public Guardian.

## Can I prevent the Attorneys from making any gifts?

Yes by placing restrictions in the LPA. However, in any event, the Attorney only has limited power to make gifts. Any gifts outside the normal birthday and Christmas gifts or gifts on similar occasions can only be made with the authority of the Court.

## Existing Enduring Powers of Attorney

EPAs validly made before 1 October 2007 will continue to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you need to make a Welfare LPA.

**For further information please contact one of our offices:**

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