

Lasting Powers of Attorney (LPAs)

Many of us may well be fortunate enough to live a long life, but may not always be able to manage our personal affairs. Should you suffer physical or mental incapacity, a Lasting Power of Attorney (LPA) could make your life easier and less stressful for you and your loved ones - as well as protecting your interests. Like an insurance policy; you hope you will never need it, but if you do, it can be invaluable.

If you don't have an LPA in place, and lose mental capacity, it will be necessary to apply to the Court of Protection to appoint someone to act as a deputy. Unfortunately, this is an extremely long, drawn out process and the costs involved are significant. The application is made by the individual wishing to act as your deputy who, of course, may not be your first choice. Whilst the application is with the Court, unfortunately there is no-one in place to be able to assist you with your financial affairs.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that allows you to appoint someone you trust as an attorney to make decisions on your behalf. It can be made at any time whilst you have capacity but can only be used after it is registered with The Office of the Public Guardian.

There are two different types of LPA – a health and welfare LPA; and a property and financial affairs LPA. You may appoint the same person as your attorney for each LPA but two separate applications must be made.

- **Health and Welfare LPA**

This enables you to choose someone to make decisions on your behalf regarding your health and welfare. This includes decisions to refuse or consent to life-sustaining treatment on your behalf, and deciding where you live.

Decisions can only be made if the LPA is registered and you lack the mental capacity to make the decisions yourself.

- **Property and Financial Affairs LPA**

This allows you to choose someone to manage your finances whilst you still have capacity, as well as when you lack capacity. There are many reasons why you may find this helpful, for example, if you find it difficult paying your bills or dealing with banks over the telephone. Your attorney would be able to pay your bills and help sell your house.

Who can make an LPA?

Anyone who is aged 18 or over and has capacity to do so. **You cannot make a LPA jointly with another person;** each person must have their own LPA.

How many people should you appoint?

We would typically advise that you appoint two attorneys, or appoint one with a replacement attorney waiting on the side-line. This is to cover times when your attorney is out of the country or if your attorney was no longer able to act, to ensure there is someone in place who can continue looking after your affairs. Your attorneys should be people that you trust and have your best interests at heart. **You can cancel your LPA at any time as long as you have the capacity to do so.**

What if I need help and there is no LPA in place?

Should you lose mental capacity, it will be necessary to apply to the Court of Protection to appoint someone to act as a deputy. Unfortunately, this is an extremely long, drawn out process and the costs involved are significantly higher. The application is made by the individual wishing to act as your deputy who, of course, may not be your first choice. Whilst the application is with the Court, unfortunately there is no-one in place to be able to assist you with your financial affairs.

Are there any alternatives?

If you like the idea of having something in place to deal with your medical decisions but do not want to appoint anyone to make those decisions on your behalf, the alternative to a health and welfare LPA is a Living Will.

A Living Will is a document in which you set out your wishes for medical treatment should you in the future become incapable of communicating with your doctor. The Living Will must specify exactly the types of treatment you do not require although it is not possible to refuse basic care or nursing needs.

Again, you must have the relevant mental capacity at the time of making the Living Will and be aged over 18 years.

Once a Living Will is drawn up it is not necessary to register it with the Court. However, it is important to ensure that a copy of the Living Will is placed with your medical notes.

Find out more

If you would like to discuss any of the issues raised in this research note, or to arrange a meeting with a clarityLAW adviser, please don't hesitate to get in touch:

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