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Lasting Powers of Attorney



UNDERSTANDING | TRUST | KNOWLEDGE

From 1st October 2007, you are no longer able to grant Enduring Powers of Attorney although those which have already been granted still remain valid.

Instead, under the Mental Capacity Act 2005, you are now able to grant a new type of Power of Attorney called a "Lasting Power of Attorney" (LPA). A Lasting Power of Attorney is a legal document where a person (the Donor) grants to another person / persons (the Attorney) authority to make certain decisions on his or her behalf.

Types of LPAs

There are two types of LPAs:

- A Financial Decisions LPA which provides your Attorney with authority to deal with your property and financial affairs and which can come into effect immediately on registration with the Office of the Public Guardian (OPG)
- A Health and Care decisions LPA which provides your Attorney with authority to make health and care decisions on your behalf when you lack mental capacity to do so yourself. Within this document, you can also provide authority to your Attorney to either give or refuse consent for life sustaining treatment. This LPA will only become effective on your mental incapacity.

Your Attorney

As with any Power of Attorney, it is a very powerful important document and you should take care who you appoint as your Attorney / Attorneys as they should be trustworthy and have the appropriate skills to act on your behalf. If you appoint more than one Attorney, you can appoint them to act jointly which means that your Attorneys must always agree with what is being done and sign all documentation together. Alternatively you can appoint them jointly and independently which means



that any one of your Attorneys can act on your behalf without necessarily involving the other on matters. You may even appoint them to act jointly for some matters and jointly and independently for others, although this should only be done with further advice from ourselves as it may cause problems when using the Power of Attorney.

Under the new legislation it is possible to appoint a Replacement Attorney as a successor to your Attorney / Attorneys, in the situation where your Attorney may die before you or may be unable or unwilling to act for you.

When can the Attorney act?

Your Attorney will only be able to act for you in relation to a Financial Decisions LPA once the legal formalities have been completed and the document is registered with the OPG. This LPA can be used both when you have capacity to act as well as when you lack mental capacity to act in your affairs.

The Health and Care Decisions LPA will only come into effect once the document is registered at the OPG and you have become mentally incapacitated. No third party can make decisions for you in relation to your Health and Care treatment whilst you continue to have the mental capacity to make your own decisions.

Certificate Provider

Once you have signed the LPA, a Certificate Provider will need to provide a certificate within the document which confirms that the Certificate Provider has discussed the provisions of the LPA with you, that you have understood the nature and the scope of the authority that you are providing to your Attorney, that there is no undue influence or duress compelling you to make the LPA and that there is no other reason why the LPA should not be granted. You can choose your own Certificate Provider if you so wish.

Existing Enduring Powers of Attorney

As indicated any Enduring Power of Attorney validly made before 1st October 2007 will continue to be a legal document but can only be used in respect of your property and financial affairs. An EPA does not give your Attorney authority for dealing with your health and welfare issues. If you wish to give such authority to your Attorney, you will need to make a Health and Care Decisions LPA.



What happens if you have not made an LPA or EPA

If you lose your capacity and can no longer make decisions for yourself, it would be necessary for a member of your family, close friend or professional adviser to make an application to the Court of Protection for the appointment of a Deputy who will make decisions on your behalf. This is both costly and time consuming and means that your Estate would have an ongoing liability to pay annual supervision fees, an annual insurance bond and fees for submitting annual accounts to the Court.

In having a valid EPA or LPA, you will avoid the necessity of an application being made to the Court of Protection by a third party for a Deputyship Order, if you have lost your mental capacity.

For further information, please make an appointment to see one of our specialist Solicitors.