

Lasting Powers of Attorney



Have you ever begun to consider how you would manage your own affairs if your physical or mental capacity were to deteriorate?

Checklist

- Who do you want to appoint as Attorney or Attorneys?
- If more than one, should they be able to act on their own or only together?
- Do you want any restrictions?
- Do you understand the full implications of an LPA?
- Have you talked it through with your Attorney/Attorneys?
- Is a solicitor going to hold the original document?
- Who will have copies?

Or would you want to ensure that your wishes in relation to medical decisions or life-sustaining treatment are carried out if you lose mental capacity?

With people living longer, cases of mental incapacity rising, and financial affairs becoming increasingly complicated, it is essential to ensure that that if you became incapable, someone will be able to make these critical decisions on your behalf.

These problems can be overcome by signing a document known as a “Lasting Power of Attorney” (LPA) – a document which is ideally signed when you are fit and healthy and the possibility of losing capacity is a situation that will hopefully never have to be faced, or if it does, then it will be many years in the future.

What is the effect of an LPA?

Under the terms of an LPA, you decide whether to appoint one or more people to act on your behalf as your Attorney. It is essential to choose the right people since the document gives them considerable power to deal with your money and affairs, or to make welfare decisions on your behalf.

You can choose whether to have a “Property” LPA or a “Welfare” LPA, or both documents, and you can choose different Attorneys for each document. You can include any restrictions you wish, although you should take legal advice before including such restrictions because this can cause problems in dealing with your affairs.

It is important to realise that once the LPA has been signed by yourself and your Attorneys, and has been registered with the Court, a “Property” LPA can be used immediately, unless a restriction preventing this is in your LPA. A “Welfare” LPA can only be used by your Attorneys if you lose mental capacity.

What if I become mentally incapable?

If you become mentally incapable, your Attorneys can simply begin to use your LPA to make decisions on your behalf, without the need for any Court process.

If however you lose mental capacity and do not have an LPA, then the only way that your family or friends can deal with your affairs is to apply to the Court of Protection for the appointment of a Deputy. This process is costly and time-consuming, and can cause a great deal of stress for your loved ones.

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How a Lasting Power of Attorney is used by your attorneys

If you lose mental capacity, your Attorneys under a "Property" LPA will need to lodge it with your bank or building society. These authorities will require sight of either the original document or a certified copy which can be provided by your solicitor. If the financial institution is satisfied that the Attorney has authority to act then they will accept their signature in place of your own.

Your Attorneys under a "Welfare" LPA can produce a certified copy of the LPA to the relevant person (such as a medical practitioner) or organisation, who will accept your Attorneys' instructions on your behalf, in accordance with the terms of your LPA.

Your Attorneys should always act in your best interests, and wherever possible, you should be consulted as to your view, even if your Attorneys believe that you have lost capacity.

What happens if you change your mind?

If you decide that you do not want the Attorneys to act on your behalf then you can revoke it at any time, provided that you have not lost mental capacity.

Conclusion

It is much better to think about a Lasting Power of Attorney when you are feeling fit and well. You need to consider carefully who the best people would be to deal with your money, or to make welfare decisions for you, and ensure that they are able to work together if you are appointing more than one. If you do not have an LPA, then your family may face a stressful and pressuring time if you should lose mental capacity. In addition, it can be difficult to think about at a time when your health is deteriorating. Please therefore give some serious consideration as to whether or not you require a Lasting Power of Attorney, thus giving you peace of mind for the future and saving your family and friends from unnecessary worry, anxiety and expense.



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