

## Property & Financial Affairs Lasting Power of Attorney

### Decisions that can be covered by a Property and Financial Affairs Lasting Power of Attorney include:

- claiming, receiving and using on your behalf any income, welfare benefits or pensions
- opening, closing or managing a bank or building society account
- paying the mortgage, rent, household expenses and bills
- insuring, maintaining and repairing property
- dealing with tax affairs
- buying or selling property
- paying for adaptations to your home
- investing savings
- allowing access to your financial information
- making gifts on your behalf (there are specific rules about this)
- paying fees for private medical care, residential care or nursing home (but remember that decisions about care are covered by a Health and Welfare Lasting Power of Attorney)
- using your money to pay for a vehicle, disability equipment or help you need

### Lasting Powers of Attorney and Ordinary Powers of Attorney

People commonly ask relatives or friends to manage their finances even while they still have capacity to make decisions. A power of attorney allows you to formalise this arrangement. If you only want your attorney to act while you still have capacity, you can create an Ordinary Power of Attorney. If you want the person to continue acting after you lose capacity, you need to create a Lasting Power of Attorney.

When you make a Property and Financial Affairs LPA, your attorney can act for you even though you still have mental capacity. This can be particularly helpful if you are losing physical capacity and are finding it difficult to sign cheques or other documents. **Having your attorney act under a Property and Financial Affairs LPA does not affect your own right to manage your finances so long as you still have capacity.**

### Independent checks

As well as an attorney, you may want someone else - a family member, friend or a professional - to go through your income and expenditure with your attorney from time to time to provide an independent check. You should make sure the person is willing to carry out this role and is prepared to ask for your accounts if the attorney doesn't provide them. If you want this, you should include this arrangement in your LPA. If the independent person is a friend or relative, the LPA should also say whether they can charge a fee for this work.

### Professional attorneys

You can appoint a trust corporation to act as attorney for property and financial affairs. A trust corporation is an organisation that manages funds, such as savings, pensions and investments. Most trust corporations are run by banks so you might want to check out those that are independent.

If you appoint a trust corporation as an attorney, they can only act as a sole attorney or sole replacement attorney (not as a joint attorney).

## Health & Welfare Lasting Power of Attorney

A Health and Welfare Lasting Power of Attorney (LPA) allows attorneys to make decisions about things that relate to your personal welfare, for example:

- where you should live or who you live with
- your day-to-day care, including diet and dress and how you will be supported
- who you have contact with
- consenting to or refusing medical examination and treatment
- arrangements for dental and eye care
- arranging assessments and provision of community care services
- leisure or social activities
- your personal correspondence and papers
- rights of access to personal information about you.

### How your attorneys will act

You can set restrictions or conditions on how your attorney can act. For example, you could allow your attorney to make decisions about social care but leave healthcare decisions to medical staff. Or you can write guidance for attorneys which will help them understand your wishes, but which is not binding on them. In most cases it is easier for your attorneys if you do not set restrictions but let them know what your wishes are while you still have capacity.

### Making decisions

You may lack capacity to make major or complex decisions but may still be able to make other decisions, for example, day-to-day matters like meals and leisure activities. Even after your attorney starts acting, they can only make the decisions which you don't have capacity to make yourself.

### Medical treatment

Health and Welfare attorneys will normally be able to consent to or refuse medical treatment on your behalf. However you may also want to consider making an Advance Decision (Living Will), setting out your wishes. There are particular rules about Advance Decisions relating to life-sustaining treatment.

Your attorney has no power to consent to or refuse life-sustaining treatment unless your LPA document specifically authorises this. If you don't give specific authorisation, the medical team or doctor in charge of your treatment will decide what treatment you should have. Doctors have a duty to act in your best interests and should also consult close relatives and friends - but they do not have to act in accordance with relatives' wishes.

### Health & Welfare LPAs and Advance Decisions (Living Wills).

#### If you make an Advance Decision after drawing up a LPA

You may have made a valid advance decision saying you want to refuse medical treatment after you drew up a LPA. If so, your attorney will not be able to consent to medical treatment that you have refused.

#### If you made a LPA after making an Advance Decision

You may have made an LPA after making an advance decision. If you gave your attorney the right to consent to or refuse medical treatment, your attorney has the legal power to choose whether or not to follow your advance decision.

# What happens if you don't make a Lasting Power of Attorney?

If you lose capacity, for example, because of an accident or a stroke or if you develop dementia, and you haven't made a valid Lasting Power of Attorney (or an Enduring Power of Attorney if it was made before October 2007), there can be major difficulties for relatives and friends.

## Some potential difficulties are set out below:

- A spouse, partner or other relative has no right to access your bank account. It is illegal for them to impersonate you. They will have to apply to the Court of Protection (See note below) to manage your finances and this is time-consuming and costly.
- A joint account could lead to more problems. If one holder of a joint bank account loses mental capacity, the bank may freeze the account and demand an order from the Court of Protection before they allow the other joint account holder to access the account. The British Bankers Association has a leaflet about banking for people who lack mental capacity.
- Your relatives could have different opinions on where you should be cared for, for example, whether you would want to be cared for at home or in residential care. They may not agree who has the right to make the decision.
- Doctors may give you treatment that you would not have wanted.
- You may want your partner or a friend to make decisions on your behalf, but another relative could step in and have different ideas.

Issues like these could result in a very lengthy and costly process in the Court of Protection. Even if the Court has made a decision on one issue, it may be necessary to apply for further orders covering other issues, involving more time and cost.

Court Fees:   £400 Application fee & £100 Deputy Register Process fee per deputy  
                  £100 to £250 Medical report fee  
                  £500 Court Hearing fee (Not always required)  
                  £300 Security bond (Average cost) based on the value of the assets – annually  
                  £320 Court Supervision fee – unless assets are below £21,000 - annually  
                  £990 + VAT Solicitors fees unless you do the paperwork yourself!

These problems and costs can be avoided by making a Lasting Power of Attorney whilst you still have capacity. This will allow you to name the attorneys you want to make decisions on your behalf.

In order to avoid all of the potential issues shown above, most people will need to set up both Lasting Powers of Attorney: one for Property & Financial Affairs and a second one for Health & Welfare. Business owners should consider a separate financial LPA for the business.

## Lasting Powers of Attorney (LPAs)

Since the law changed in 2007, and for peace of mind, it is more important than ever that you make Lasting Powers of Attorney (LPAs) to nominate someone you trust now to make important decisions on your behalf in the future. LPAs are often left too late and you cannot make an LPA if you are no longer able to make decisions for yourself.

What we offer is, a visit to your home to take your instructions and then a return visit with the LPAs and associated documents for explanation, signing and witnessing. Our service includes:

- Legal advice and guidance concerning LPAs and the registration process.
- Preparation and witnessing of the original LPA.
- Acting as Certificate Provider.
- Preparation of registration documents to the Office of the Public Guardian (OPG).
- Preparation of notifications to nominated individuals.
- Preparation of fee exemption or remission applications to the OPG (If you are eligible).

### Prices

Single LPA (in exceptional circumstances):	£325 + OPG fees
Two LPAs for one person:	£525 + OPG fees
Four LPAs for a couple:	£995 + OPG fees

OPG fees are currently £82 per LPA unless fee remission or exemption applies.

**To set up Lasting Powers of Attorney, contact Peter in Kent: Tel: 01622 720985 or 07747 007971 or email: [peter@camrasswills.co.uk](mailto:peter@camrasswills.co.uk) or Lucy in Sussex: Tel: 01273 976967 or 07581 119678 or email: [lucy@camrasswills.co.uk](mailto:lucy@camrasswills.co.uk)**

