

Lasting Powers of Attorney

A Lasting Power of Attorney ('LPA') is a document which legally enables one or more individuals you know and trust, your *Attorneys*, to have the *Power* to make decisions on your behalf if you lose Mental Capacity ('capacity'). Unlike a Will which deals with your estate when you are no longer here, an LPA deals with your Financial and Care decisions while you are alive but lack capacity. There are two types of LPA; a Property and Financial LPA, and a Health and Welfare LPA.

Plan for the Future

Contrary to beliefs like, "*I would never need an LPA*", or "*My next of kin will get the final say*", the reality is that everyone needs an LPA, regardless of age or current mental health status. A former Lord Chancellor and Secretary of State for Justice said in 2007 when LPAs were first introduced, "*We all know how important it is to plan for the future. Having a Lasting Power of Attorney (LPA)... in place should be as common and natural as making a Will*". Less than 1% of the adult UK population has an LPA. However, 1 in 3 persons on average over the age of 65 in the UK develop dementia (Alzheimer's Society), and every 90 seconds someone in the UK, is admitted to hospital with an acquired brain injury (Headway). The following are four reasons why you should make and register one or both types of LPA.

1. Choice

When capacity is lost and there is no LPA in place, the only alternative is an application for a Deputyship order which is submitted to the Court of Protection. With a Deputyship application, anyone over the age of 18 can apply to the Court of Protection to be your Deputy to make Financial decisions on your behalf. If your Deputy is over the age of 18, they have the necessary financial skills, and if nobody objects to the application, then deputyship will be granted. The appointed deputies may not necessarily reflect your intentions. Without an LPA in place, you would be giving up your power of choice and leaving it to the Courts to determine who should make decisions on your behalf and how those decisions are to be made. Take your power back, and do not let a stranger or someone you may not have chosen yourself take control over your Financial and Care decisions. In the case of a Property and Financial LPA, you can also specify whether your Attorneys can use the LPA immediately upon registration, or only when capacity is lost.

You also gain control over exactly how your attorneys can act. You can appoint your Attorneys to act (1) jointly, (2) jointly and severally, or (3) jointly for some decisions but jointly and severally for other decisions (the hybrid power). Without an LPA in place, you would be putting your family and relatives in a difficult situation when they have to decide who is to act on your behalf if you lose capacity.

2. Costs

For the Court of Protection to grant permission for a Deputyship order the initial Court application fee is £385.00 and this excludes legal fees, and the ongoing annual fees payable to the Court of Protection. The registration fee to register one LPA, be it (a) Property and Financial or (b) Health and Welfare with the Office of the Public Guardian ('OPG'), is £82.00 only, payable to the OPG by cheque or card. Factoring in the initial costs, any legal fees and the ongoing supervision charges, having an LPA completed and registered is by far the more cost effective and reasonably priced solution compared to applying for a Deputyship order.

3. Time

To register an existing LPA with the OPG takes anywhere between a minimum of 4 weeks and a maximum of 16 weeks. When capacity is lost and there is no LPA in place ready to be used, a Deputyship application would have to be submitted so that at least one deputy is appointed to act. To process a Deputyship application through the Court of Protection can take 6 months or more and this is at a time when you will have already lost capacity and the appointment is desperately needed. A Deputyship application is a more time-consuming undertaking, compared to the shorter time required to create and register an LPA in advance with the OPG.

4. Instructions

LPAs allow you to specify any preferences you would like your Attorneys to be aware of when they start dealing with your Property and Care decisions. Preferences are non-binding expressions of wishes that your Attorneys are expected to keep in mind when making decisions on your behalf. LPAs also allow you to make known any Instructions you may have for your Attorneys. These are legally binding and your Attorneys must follow them. As part of your instructions, you can grant your Attorneys access to your digital assets, online bank accounts and your Will. You can also use the Instructions section of your LPA to make known any charity donation wishes and you can also give any Discretionary Investment Management instructions.

The earlier an LPA is created and registered the better

With an LPA document in place, you have peace of mind and full estate planning control. You would have specifically selected your Attorneys and given them authority to make Financial and Care decisions on your behalf. LPAs allow you to choose any Replacement Attorneys and even a professional Attorney (such as a Trust Corporation), in case your primary Attorneys are unable or unwilling to act. Finally, if you lack capacity but your Property and Financial LPA is not registered, your Attorneys would not be able to access your bank accounts to pay for expenses such as care home fees until after they validate your LPA when it is officially stamped and registered with the OPG. If you hold an account jointly with someone else they will find themselves unable to operate the account until an LPA or Deputyship order is produced to the bank.

To find out more about creating and registering an LPA please contact Tudor Wills and Trusts Ltd, 07450 702297