

## **QUICK GUIDE TO LASTING POWERS OF ATTORNEY**

### **WHY ARE LPAS A VITAL PART OF ESTATE PLANNING?**

Most adults know that they should write a will to deal with their affairs when they pass away, but there is a lack of awareness about what would happen if they were to lose capacity during their lifetime. Lasting Power of Attorney (LPA) documents bridge this gap and ensure that decisions can continue to be made and assets can still be accessed upon loss of capacity.

### **WHAT DOES AN LPA DO?**

An LPA allows an individual to appoint a third party to make decisions on their behalf, for if they no longer have the capacity to make decisions themselves. This should be a friend or family members (or a mixture of the two) whom they trust. The LPA will give those people powers and authority to make decisions on behalf of the donor (the client).

### **WHAT HAPPENS IF AN LPA IS NOT IN PLACE?**

If a person doesn't have LPAs in place and they do become mentally incapacitated, their loved ones can face long delays and an onerous application to the Court of Protection to be able to act on their behalf. During this process, assets are likely to be frozen, including joint assets, which can cause significant problems for anyone who may need to make arrangements.

### **WHY ARE THERE TWO TYPES OF LPAS?**

The two types of LPA are Property and Financial Affairs LPA (PFA) and Health and Welfare LPA (H&W). The PFA LPA gives attorneys the authority to look after the donor's finances – including buying and selling property, dealing with bills, running bank accounts, and investing money. The H&W LPA allows attorneys to make decisions about medical treatment, or day to day care, on behalf of the donor should they be unable to make those decisions themselves. Clients can have one LPA without the other as they are standalone documents, but best advice would be for them to put both documents in place to ensure they are fully covered.

### **WHAT IS THE PROCESS IF SOMEONE NEEDS AN LPA AND HAS LOST CAPACITY?**

Sadly, a donor cannot make an LPA if they have already lost capacity. Instead, someone would need to apply to the Court of Protection for a deputyship order which is costly, time consuming and will not always be granted.

### **DO THE DOCUMENTS NEED TO BE REGISTERED?**

Yes, the LPA documents can only be used once they have been registered with the Office of the Public Guardian (OPG). The OPG is an executive agency, sponsored by the Ministry of Justice and all LPAs must be submitted to the OPG to be checked and registered before they can be used.

### **WHY CHOOSE APS TO DRAFT & REGISTER THE LPAS?**

APS has a qualified Legal Team who draft the LPA documents and will raise any queries that may be necessary to ensure the documents can be used to the fullest. APS has a dedicated LPA Administrator who deals solely with the LPA registrations meaning that all documents will be carefully checked before they are sent to the OPG for registration. If any issues are noticed, these can be rectified before

the documents are sent for registration, reducing the chances of the application being rejected. APS will liaise with the OPG throughout the registration process and provide updates to the Associate when the status of the registration has changed. This alleviates the pressure from the clients having to undertake this work and they can be assured that at the end of the process, the LPA documents will be in place and registered.

#### **WHAT IS THE PROCESS FOR PUTTING AN LPA IN PLACE?**

1. Instruction meeting with the client and the case is submitted to APS.
2. Documents are drafted by our qualified Legal Department, covered under our PI insurance.
3. Draft documents are sent to the associate within 10 working days (ideal time frame to incorporate cooling off period).
4. Drafts are checked by the associate and the clients and once approval has been obtained, the documents will be sent to the associate for signing.
5. The LPAs are signed correctly by the donor, certificate provider and their attorneys.
6. Signed documents are then sent back to APS (if the clients are paying for our checking and registration service) and the documents are checked and sent to the OPG for registration (OPG fee is required).
7. Once the documents have been registered, the OPG will send them back to APS and we will then forward to the associate. Clients can either store these themselves or opt into our secure storage facility.

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