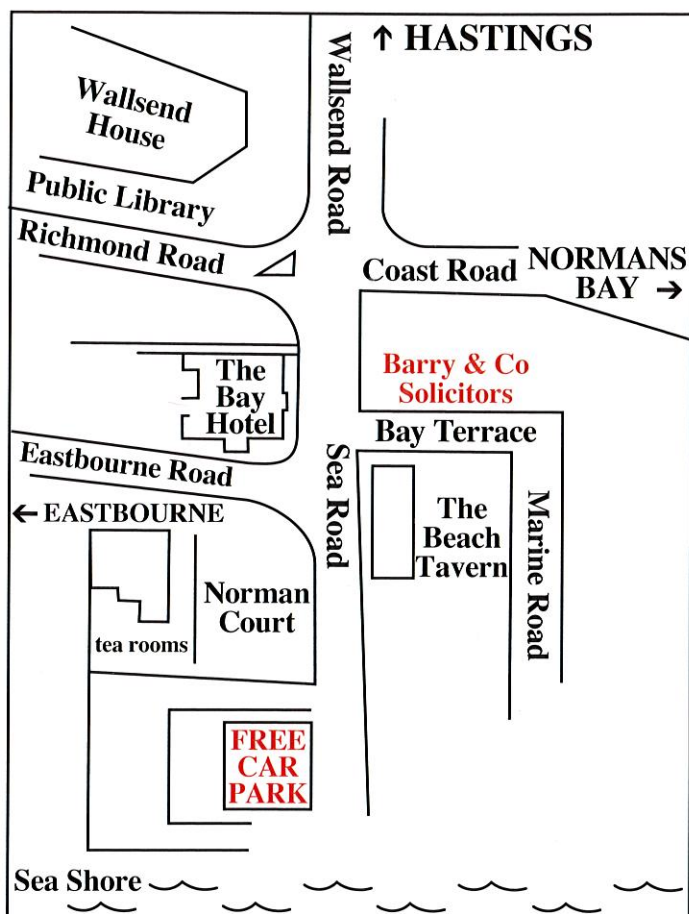


**BARRY & CO.**

*Solicitors*

BAY TERRACE  
PEVENSEY BAY, EAST SUSSEX BN24 6EE  
Telephone  
Eastbourne (01323) 766370/768382



# LASTING POWER OF ATTORNEY

BARRY & CO.  
Telephone (01323) 766370/768382

Office hours: Mon-Fri  
9.00am - 1.00pm  
2.00pm - 5.00pm  
Home appointments can be arranged.

Email: [info@barryandco.org](mailto:info@barryandco.org)



This brochure is not intended as an exhaustive statement of the Law, it is prepared as a guide only and professional legal advice should always be sought from a Solicitor on such matters and on the preparation of any document(s) intended to have legal effect.

(Health  
& Welfare)

## WHAT IS A LASTING POWER OF ATTORNEY FOR HEALTH AND WELFARE?

The purpose of a Lasting Power of Attorney document for Health and Welfare is to enable you to appoint an Attorney(s) to look after your health and welfare issues if you become mentally incapable (temporarily or permanently) for whatever reason e.g. serious illness, accident, disease, disability (an Ordinary Power of Attorney is revoked by mental incapacity).

If you have not appointed an Attorney(s) to deal with health and welfare issues and you lose mental capacity the Court of Protection may appoint a Deputy to deal with Health and Welfare issues and this may not be the person you would have wished for. Potentially this could be someone who is not familiar with your needs and wishes or someone that you yourself would not trust, this may be particularly important if you are in a relationship and you are not married (invariably your next of kin will not in those circumstances be your partner).

## WHAT IS AN ATTORNEY?

An Attorney is a person/persons you choose to act on your behalf to deal with all of your Health and Welfare issues. The Attorney you appoint will be able to make all decisions about your health and welfare including where you live, what clothes you wear, what diet is appropriate for you and what medication is suitable and if you elect, whether or not you should receive life sustaining treatment.

Under a Health and Welfare Power of Attorney your Attorney(s) cannot make decisions for you unless you are unable to do so for yourself.

## MAY I RESTRICT THE POWER GIVEN TO MY ATTORNEY IN THE LASTING POWER OF ATTORNEY DOCUMENT?

The regime provides that you may be specific as to your preferences as to your care and treatment and you may instruct your Attorney(s) to follow your instructions exactly and you may additionally empower your Attorney(s) to make decisions about whether or not you should receive life sustaining treatment. If you choose to give your Attorney(s) this additional power, then your Attorney(s) can speak to doctors on your behalf as if they were you.

In addition, as a safeguard your Attorney(s) will not be able to act on your behalf or in regard to any of your Health and Welfare issues by virtue of the Lasting Power of Attorney unless the document has been formally registered with the Office of the Public Guardian.

## SHOULD I REGISTER THE LASTING POWER OF ATTORNEY DOCUMENT WITH THE OFFICE OF THE PUBLIC GUARDIAN?

Ideally, it is probably better to register the Power of Attorney with the Office of the Public Guardian so that it is available to be used immediately if need be.

It is possible to leave the registration in abeyance until you think that the document may be required, however, the registration process is quite lengthy and with a Health and Welfare Power of Attorney by the very nature of the document it may be required at very short notice or without any warning at all.

## CAN I STILL DEAL WITH ALL OF MY OWN HEALTH AND WELFARE ISSUES AFTER I HAVE MADE A LASTING POWER OF ATTORNEY AND APPOINTED AN ATTORNEY/ ATTORNEYS REGISTERED WITH THE OFFICE OF THE PUBLIC GUARDIAN OR NOT?

Yes, you may still deal with all of your health and welfare issues in exactly the same manner as before.

The Lasting Power of Attorney only gives your Attorney(s) the power to deal with health and welfare issues if you have become mentally incapable and the Lasting Power of Attorney has been registered with the Office of the Public Guardian.

## COULD THE SAME PERSON(S) THAT I HAVE APPOINTED AS EXECUTORS IN MY WILL BE APPOINTED AS MY ATTORNEY(S) IN A LASTING POWER OF ATTORNEY DOCUMENT?

Yes

## WHAT IF MY CIRCUMSTANCES ALTER OR IF I DECIDE THAT I DO NOT WISH TO HAVE A PARTICULAR PERSON(S) AS MY ATTORNEY(S) ANY LONGER, OR I SIMPLY DO NOT WISH TO HAVE ANY LASTING POWER OF ATTORNEY DOCUMENT IN PLACE AT ALL?

You may revoke the Lasting Power of Attorney entirely or alter it by changing your Attorney(s) or change the instructions that you have given to your Attorney(s) in whatever manner you wish, whenever you wish provided that you still have mental capacity (even if the Lasting Power of Attorney has been registered with the Office of the Public Guardian), but if you do decide to alter Attorney(s) or the terms of the appointment then the document would need to be redrawn and refiled with the Office of the Public Guardian.

## WHY DO I NEED A LASTING POWER OF ATTORNEY AS OPPOSED TO AN ORDINARY POWER OF ATTORNEY?

An ordinary Power of Attorney is revoked by subsequent mental incapacity and therefore the Court of Protection would need to appoint a Deputy to deal with your affairs as if you had never appointed an Attorney at all and the person(s) appointed by the Court of Protection may not be the one that you would consider most suitable.

## WHAT HAPPENS IN THE EVENT OF ME BECOMING MENTALLY INCAPABLE FOLLOWING THE MAKING OF THE LASTING POWER OF ATTORNEY?

You would no longer be able to revoke the appointment of the Attorney(s) in the Lasting Power of Attorney whilst your mental incapacity continued but your Attorney(s) would be able to continue to manage your Health and Welfare issues to the extent and in the manner that you had directed in the Lasting Power of Attorney document.

## IS A LASTING POWER OF ATTORNEY A SUBSTITUTE FOR MAKING A WILL?

No, the provisions of a Lasting Power of Attorney will subsist only during your lifetime (or until you revoke it), it is not a substitute for a Will. Ideally, the preparation of a Lasting Power of Attorney and a Will should go side by side.

## HOW MUCH WILL IT COST TO PREPARE A LASTING POWER OF ATTORNEY?

The usual fee for the preparation of a Lasting Power of Attorney and the registration of the same with the Office of the Public Guardian is £470 + VAT plus a Court fee of £82.

The Lasting Power of Attorney does not need to be registered with the Office of the Public Guardian at inception it may be registered with the Office of the Public Guardian at a later time, if you choose to only have the document prepared and not registered the usual fee is £235 +VAT.

If the document is registered with the Office of the Public Guardian at a later time by you or by your Attorney(s) there is a Court fee (presently £82) and the legal fees on the subsequent registration would be in the region of £300 +VAT.

In short a Lasting Power of Attorney Health and Welfare is a document which enables you to appoint an Attorney(s) to deal with your health and welfare issues in the event that you might in the future lose your mental capacity either temporarily or permanently for whatever reason.

Thus you may make provision for the proper handling of all of your Health and Welfare issues and appoint person(s) that you trust to ensure that you are cared for as you would have directed for yourself and you can empower your Attorney(s) to speak to the medical profession as if they were you and if you wish, you may choose to give your Attorney(s) the extra power to make decisions as to whether or not you should receive life sustaining treatment.