



A Guide to Lasting Powers of Attorney (LPAs)

Introduction

As you never know what's around the corner, it is as well to be prepared for possible difficulties. For example, who will look after your financial and other affairs should you become incapacitated. Your ability to cope with such an eventuality, hopefully remote, has been increased by the introduction of Lasting Powers of Attorney (LPAs), in the Mental Capacity Act 2005 whereby LPAs replaced Enduring Powers of Attorney (EPA) with effect from 1st October 2007.

If you made an EPA before 1st October 2007, it will still remain valid and can be used by your appointed Attorney to manage your business affairs.

What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document by which you appoint someone whom you trust (your Attorney) to make decisions on your behalf during your lifetime about things such as your healthcare or finances. Unlike an ordinary Power of Attorney, an LPA remains valid even if you become mentally incapable through accident, illness or mental confusion.

Why Make a Lasting Power of Attorney?

Your Spouse, Registered Civil Partner, children or next of kin do not automatically have any legal authority to handle your financial or personal affairs. You can authorise them to do specific things on your behalf but if you become unable to give instructions, or to sign, they will not have the authority to continue to handle your affairs or make important decisions if you lose capacity. In that event, if you have not made an LPA, your nearest and dearest may have to apply to the Office of the Public Guardian for appointment as your Deputy.

The benefit of making an LPA now is that if at some stage in the future you suddenly become ill and cannot deal with your own affairs, your Attorney(s) will be able to step in and deal with your affairs on your behalf. In order for the LPA to be valid, you have to be capable of understanding its nature and effect, so it must be made while you are still mentally alert when you sign it.

The LPA cannot be used until it has been registered with the Office of the Public Guardian. Unlike an EPA, to be used, your LPA must be registered even if you still have full mental capacity.

There are Two Different Types of LPA

You can choose whether to make one or the other or both and could if you wish appoint different Attorneys in each document.

Personal Welfare LPA (PW LPA) This allows your Attorney to make decisions on your behalf about your personal welfare such as where you live and if you choose such option, to give or refuse consent to medical treatment, on your behalf. Decisions under a PW LPA can only be taken on your behalf by your Attorney when you have lost the capacity to make such decision for yourself.

Property and Affairs LPA (P&A LPA) This allows your Attorney to make decisions on your behalf about your property, finances and business affairs generally. Unlike the Personal Welfare Lasting Power of Attorney, provided it is registered with the Office of the Public Guardian (see para.6 below) an Attorney under a Property and Affairs Lasting Power of Attorney can act under the Power even though you still have full mental capacity. This would include paying your bills, selling your house and managing your savings and investments.

Who Can You Appoint as Your Attorney?

This is a very important decision because once your LPA is registered, your Attorney will be able to make decisions about your personal welfare and/or property and finances.

The Attorney must not only be someone you can trust completely but must also be available to deal with things on your behalf and be prepared to take on the responsibilities involved. Barwells can offer advice on this issue if required.

You can choose more than one Attorney and we would encourage you to choose at least two but in that case you must consider whether you wish your Attorneys to act together or whether you are willing to allow them to act together **AND** independently. You must also decide whether you wish to include any replacement Attorneys who would step into the shoes of any original Attorney who could no longer act for any reason.



When Should I Register my LPA?

Your LPA can be registered with the Office of the Public Guardian at any time after you have made it but cannot be used until it has been registered. The benefit of registering the LPA shortly after it is made is that it will be ready to be used by your Attorney(s) when it is needed. However, the fee for registering an LPA is £110 and in addition we may make a charge for dealing with the paperwork.

It is for you to decide whether you wish to register your LPA immediately or to delay this. There could be problems in the future if you delay registration; the registration process will take at least 8 weeks and your Attorney will not be able to pay any bills etc. on your behalf until the process is complete.

Once registration has been completed, the Court does not oversee the Attorney's actions but if notified of any problems eg, fraud, it could cancel the registration and appoint a Deputy.

What Happens if You Do Not Make an LPA?

If you do not have an LPA and you become mentally incapable, application must be made (usually by a close relative) to the Court's Public Guardianship Officer for the appointment of a Deputy to manage your affairs and make decisions on your behalf. The Application must be supported by a medical certificate from your doctor together with a detailed account of your family and property. The procedure can take several months.

There is a fee of £400 for an application for the appointment of a Deputy and £125 when the Order appointing the Deputy is made. There is an annual administration fee of up to £800 depending on the level of supervision required, plus fees for further directions eg, sale of property. Solicitors costs are either on a fixed scale or assessed by the Court. The Court's fees are correct as at 1st October 2007.

The Court directs the Deputy how to manage your affairs; the Deputy must prepare an annual account showing all money received and spent

Due to the cost, delay and Court involvement, a Deputyship is best avoided!

What Will it Cost to Make an LPA?

We have a published Tariff for making straightforward Wills and LPAs and a copy of this will be supplied upon request.

What Do You Need to do About it?

You should think about setting up an LPA as soon as possible. Discuss the idea with your family and friends and if appropriate arrange an appointment to call in and see an experienced Private Client Practitioner at one of our offices at:-

6 Hyde Gardens, Eastbourne

Tel: 01323 435473 Fax: 01323 410288

Email: private.client-eb@barwells.com

2 Market Square, Hailsham

Tel: 01323 814010 Fax: 01323 814014

Email: private.client-hs@barwells.com

10 Sutton Park Road, Seaford

Tel: 01323 875025 Fax: 01323 890777

Email: private.client-sf@barwells.com

19 High Street, Newhaven

Tel: 01273 514213 Fax: 01273 516731

Email: private.client-nh@barwells.com

238 South Coast Road, Peacehaven

Tel: 01273 575015 Fax: 01273 582272

Email: private.client-ph@barwells.com

**Home appointments can be arranged if necessary,
at no extra cost.**