

Lasting Powers of Attorney

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FROM THE 1ST OCTOBER 2007, YOU ARE ABLE TO MAKE A NEW TYPE OF POWER OF ATTORNEY, CALLED A 'LASTING POWER OF ATTORNEY' (LPA). A POWER OF ATTORNEY IS A LEGAL DOCUMENT WHERE A PERSON GIVES ANOTHER PERSON OR PERSONS (THE ATTORNEY) AUTHORITY TO MAKE CERTAIN DECISIONS ON HIS OR HER BEHALF.

TYPES OF LPAS

There are two types of LPAs:

A property and affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify

A welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment

YOUR ATTORNEY

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done after taking advice, as it may cause problems when using the power.

WHEN CAN THE ATTORNEY ACT?

The attorney will only be able to act when the LPA has been signed by you and your attorney. It must be certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm that there has not been any fraud or any reason why you cannot make the power. It must then be registered with the Office of Public Guardian before it can be used. The financial LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

EXISTING ENDURING POWERS OF ATTORNEY

Any enduring power, validly made before 1st October 2007, will continue to be able to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a welfare LPA.

WHAT HAPPENS IF YOU HAVE NOT MADE A LPA OR EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a welfare LPA.

For more detailed advice contact Kenneth Curtis who is a member of Solicitors for the Elderly and the Society of Trusts Estates and Practitioners