



Lasting Powers of Attorney (Property and Affairs)

Lasting Powers of Attorney (LPAs) were created by the Mental Capacity Act 2005. They have replaced Enduring Powers of Attorney (EPAs) as from 1 October 2007 (although an EPA made before 1 October 2007 will still be valid).

What is an LPA?

An LPA allows you to choose someone (the Attorney) to make financial decisions on your behalf. Another type of Power of Attorney (a Personal Welfare LPA) enables you to delegate healthcare and lifestyle decisions to someone, if you become incapable of making those decisions for yourself. Please ask for our separate leaflet.

Why should I make an LPA?

We don't know what lies in store for us. An LPA is an opportunity to appoint someone you can trust to look after your financial affairs if you become unable to do so. For instance, if you have to go into a care home, your Attorney will be able to deal with all the financial arrangements and can let or sell your home.

If you do not have an LPA, the Court will appoint a Deputy (formerly called a Receiver) to look after your affairs. This involves greater formality and added expense. By signing an LPA you are making your own choice as to who you wish to act for you.

Who should I appoint as Attorney?

Because you are giving your Attorney wide powers over your finances, he or she must be someone you can trust absolutely. They should also have some financial experience. You can appoint your children or other relatives (not always a good idea!), friends or professionals – a solicitor or accountant – or a mixture.

How many should I appoint – and do they all have to agree?

You can appoint as many (or as few) attorneys as you like.

Two or three is usual. You can also appoint a substitute attorney who can step in if an original attorney dies or cannot act for some other reason. This is a change from EPAs. You do, however, need to be very specific about who the substitute attorneys will replace and in what circumstances.

You can provide that all your attorneys must agree, although this can be inflexible and causes problems if one of them dies. You can say that your attorneys can act independently of each other; or that they have to agree over certain matters, such as selling your home; or that two out of three must agree. You can be much more flexible than you could with an EPA.

Can I limit the Attorneys' powers?

Yes. For instance, you can say that your attorneys cannot act unless you become mentally incapable, or cannot do certain things like sell your house. You might wish to specify the circumstances in which the attorneys can make gifts (although, as with EPAs, the power to do so is very limited and cannot be extended, even with your express authority). If you appoint a professional executor, you may need to authorise him to charge fees.

Can I give guidance to my Attorneys?

The prescribed form does have space for you to give guidance to your attorneys as to how they should use their powers. However, this guidance is not binding upon them.

I believe the Power has to be registered. Can it be used before it is registered?

The Power has to be registered at the Court of Protection before it can be used. The cost of registration is currently £150. This is another contrast to EPAs which only had to be registered if the person granting it (the donor) became mentally incapable.

Do the Attorneys still have to give notice of registration to my relatives?

This is one of the main changes from EPAs. You can now choose up to five people who have to be notified. You might, for instance, want your solicitor to be notified. If your attorneys apply for registration, you will be notified by the Court of Protection.

You can decide that nobody needs to be notified, but this may be inadvisable and also means you need two people to act as “certificate providers” (dealt with later in this note).

Is the form very complicated?

Well, it is very long (25 pages including the notes). The first part contains your details; details of the Attorneys, and any restrictions on their powers; and details of the people to be notified if the power is registered.

In the second part, you have to obtain a certificate by someone independent. He or she must certify that you understand the nature and scope of the LPA; that you are not being put under pressure to sign it; and that there is no other reason to prevent it being granted.

The certificate provider can either be someone who knows you well, or a professional such as a doctor or solicitor.

If you do not nominate anyone to be notified of registration, you need two certificate providers.

Finally, each attorney must complete a separate statement confirming that he or she understands their duties.

Can I do it myself?

We recommend that you see a solicitor who can advise you on the various choices you need to make when creating an LPA. We at Lester Aldridge LLP are experienced at dealing with Powers of Attorney, and can guide you through the form with care and understanding.

For further information, or to discuss LPAs, please contact David Parkhouse or Melanie Sweeting of our Tax Trusts and Wills team who will be pleased to help you.