

Lasting Powers of Attorney - frequently asked questions

Q What is a Lasting Power of Attorney?

A A lasting Power of Attorney (LPA) is a document that enables you to appoint someone to make decisions on your behalf.

Q Are they new?

A Yes – they were introduced on 1 October 2007 to replace the old Enduring Powers of Attorney (EPAs). The government's idea was to reduce fraud by attorneys.

Q I made an EPA before 1 October 2007. Is it invalid?

A No – if an EPA was signed by you and your attorneys before that date, the same rules apply. It is just that you cannot make a new EPA.

Q I have heard that there are two types of LPA. Is this right?

A Yes – a Property & Affairs LPA enables you to appoint someone to act for you in relation to your financial affairs (your money and property).

A welfare LPA allows you to choose someone to make healthcare and welfare decisions for you, such as where you live, if you are unable to make such decisions for yourself. You can also give your Welfare Attorney power to refuse or consent to life sustaining treatment on your behalf.

Q Who should I appoint as my attorneys, and how many do I need?

A You must only appoint people you trust absolutely to act in your best interests. You should choose people who have experience in looking after money. It is sensible to appoint people who are younger than you.

You should appoint at least two attorneys to act in case something happens to one of them. Having two attorneys also reduces the chances of their abusing their power.

Q What happens if one of my attorneys dies?

A If you have more than one attorney, the survivor may be able to act.

An LPA also enables you to appoint substitute attorneys, who can take over from the original attorneys in certain circumstances. This is a change from EPAs, which did not allow you to appoint substitutes.

Q How do these LPAs reduce the risk of abuse by the attorneys?

A Well, first of all, you can choose people to be notified when the power is registered. If they think something is wrong, they can complain to the court.

In addition, when you sign the power, you need someone (called a certificate provider) to confirm that you understand the nature and the scope of the power, and that you have not been forced to sign it.

Q Who can be a certificate provider?

A Either a professional (such a doctor or solicitor), or someone who has known you for more than two years.

Q You mentioned registration of the LPA

A EPAs could be used as soon as they were signed. They only had to be registered if you became mentally incapable of dealing with your own affairs. However, LPAs cannot be used until they are registered. Once a Property & Affairs LPA is registered, it can be used straight away. A Welfare LPA, however, cannot be used even if it has been registered, until you become incapable of making decisions for yourself.

Q Will my family be notified of the application to register?

A Not automatically. Only the people you have nominated will be

notified. This again is a change from EPAs, where family members were automatically notified – you had no choice.

Q Can I cancel an LPA?

A You can cancel an LPA (or an EPA) provided you are mentally capable of doing so.

Property & Affairs LPAs and EPAs are cancelled if you or your appointed attorney become bankrupt.

Q I have heard that forms are very complicated. Is this true?

A It is true that the forms are long – up to 25 pages. There are a good many decisions that have to be made. You have to choose your attorneys, any substitutes, the persons to be notified and who is to act as your certificate provider. Many people do find the guidance of an experienced solicitor to be helpful.

Q What about the cost?

A Because of the length of the documents, it is more expensive to make an LPA than it was to make an EPA. In addition, when you've registered the power, there is a fee payable to the court of £150.

Q Do I need a solicitor to make an LPA?

A It is not essential, but the government's own website advises that "depending on the complexity of your property and financial affairs, it may be a good idea to get advice from a solicitor before making an LPA".

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

