

LASTING POWERS OF ATTORNEY AND EXISTING ENDURING POWERS OF ATTORNEY

People today are living longer than ever before and as a result many more people find that, at some point in their lifetime, they need the help of others to manage their property and affairs and possibly even to assist with decisions relating to health and welfare. Lasting Powers of Attorney allow you to decide who is to look after things for you if you become unable to make the necessary decisions for yourself. The Property and Affairs Power of Attorney may also be used when you are able to make your own decisions but, perhaps due to physical infirmity, you need assistance e.g. someone to collect your pension or to go to the bank for you.

New Enduring Powers of Attorney cannot be made (since 1st October 2007) but Enduring Powers of Attorney made before that date remain valid and must be registered with the Office of the Public Guardian if the Donor of the Power (the person who made the Power of Attorney) begins to lose mental capacity.

LASTING POWERS OF ATTORNEY (LPA)

You can create two types of LPA:

- Property and Affairs LPA which allows your Attorney to make decisions about how to spend your money and the way your property and finances are managed; and
- Health and Welfare LPA which allows your Attorney to make decisions about healthcare and other welfare decisions. This could include giving or refusing consent to medical treatment or deciding where you are to live and the care you are to receive.

Before either type of LPA can be used it must be registered with the Office of the Public Guardian and your Attorney may only make decisions for you if you are unable to make them for yourself.

HOW MANY PEOPLE SHOULD YOU APPOINT AND WHO?

It is important to take care when choosing who to appoint as your Attorneys. The Power of Attorney could be abused if your Attorney is not completely trustworthy and some people may not have the necessary skills to look after your money for you. You should consider

how well they look after their own financial affairs and whether you can trust them to use your money to meet your needs

It is sensible to consider appointing more than one Attorney as this provides some safeguard against the Power being abused by one Attorney and also provides an alternative should one of the Attorneys become unable to continue acting for you.

However, with regard to the Health and Welfare Power of Attorney it may be more sensible to only appoint one person unless you can be sure that all of the Attorneys you have appointed will be able to work together and are likely to be in agreement with the treatment and care that you should receive. If your Attorneys cannot agree then Social Services or Doctors may step in to take the decision out of their hands and the point of making the Power of Attorney will be lost. You could however appoint a replacement Attorney in case your original Attorney becomes unable to continue acting for you.

WHEN CAN MY ATTORNEYS MAKE DECISIONS FOR ME?

Your Attorney must take all practicable steps to help you to make any decisions that need to be made yourself. If you are able to make the decision for yourself you can still ask your Attorney to help you to put the decision into effect e.g. to assist you by completing forms or by talking to someone on your behalf. Where you are able to make a decision for yourself your Attorney should only act as you have instructed them.

WHAT DECISIONS CAN MY ATTORNEYS MAKE FOR ME?

Your Attorney under a Property and Affairs LPA is able to act on your behalf in respect of all of your property and financial affairs, unless you have restricted the Power of Attorney, including:-

- Buying or selling property
- Opening or closing bank accounts or investments
- Claiming and receiving pensions and benefits on your behalf
- Making limited gifts on your behalf (e.g. birthday, wedding or anniversary gifts)

Your Property and Affairs Attorney may assist you to implement decisions that you have made e.g. by signing cheques or paperwork for you and may make decisions on your behalf when you are unable to make those decisions for yourself. It is important that your Attorneys keep all receipts and statements relating to your affairs as these may need to be produced to the Office of the Public Guardian if there is ever any question about the way in which your Attorney has managed your affairs.

Your Attorney under a Health and Welfare LPA will be able to make decisions about your personal welfare and health care which could include: -

- Where you live and who you should live with
- Your day to day care including diet and dress
- Consenting to or refusing medical examinations and treatment on your behalf
- Arrangements needed for you to be given medical, dental or optical treatment
- Dealing with assessments for the provision of community care services
- Whether you should take part in social activities, leisure activities, education or training
- Rights of access to personal information about you

However, your Health and Welfare Attorney may only make decisions or take actions on your behalf where you are unable to make the decision in question.

The starting point for your Attorney is always to assume that you have the ability to make a decision for yourself unless it has been established that you cannot and, even if it is felt that you do not have the ability to make a decision for yourself your Attorney must still consult with you before making the decision on your behalf.

If it is difficult for you to make your own decision your Attorney should assist you as much as possible to help you to make that decision for yourself and should only consider making the decision for you if you cannot make the decision even with help and support.

Your Attorney must explain clearly to you any information you may need to make the decision including the risks and benefits or the affect that the decision may have upon you and people close to you. When making any decision on your behalf your Attorney must do so in your best interests.

If you do not appoint someone to take these decisions for you then, if you become unable to make decisions for yourself, Social Services, Doctors and even the Court of Protection may have to step in to make decisions which they feel are in your best interests. By making a Power of Attorney you are able to choose who you would like to make those decisions for you and to provide your chosen person with the necessary legal authority to do so.

ENDURING POWER OF ATTORNEY (EPA)

An Attorney given power under an EPA before 1 October 2007 can still use it and apply to have it registered. The Attorney has a duty to apply to register the EPA as soon as they believe that you are becoming or have become mentally incapable of making financial decisions for yourself.

If your EPA is unregistered and you decide that you would like to change the Attorneys that you had appointed it will be necessary to make a new LPA appointing the new Attorneys and the previous EPA will need to be cancelled.

You may also make an LPA for Health and Welfare to run alongside an existing EPA if you wish

CANCELLING POWERS OF ATTORNEY

Lasting Power of Attorney (LPA)

You can cancel your LPA if you have the mental capacity to do so.

An Attorney under a Property and Affairs LPA cannot continue to act for you if you or your Attorney becomes bankrupt, however, bankruptcy does not terminate a Personal Welfare LPA.

Enduring Power of Attorney (EPA)

You can cancel an unregistered EPA if you have the mental capacity to do so.

To cancel a registered EPA you must show the Court of Protection:

- that you understand who the attorney is and what powers they have
- that you understand the effect of the cancellation
- why the EPA needs to be cancelled

An Attorney under an EPA cannot continue to act for you if you or the appointed Attorney becomes bankrupt.