

Lasting Power of Attorney

Why you should have a Lasting Power of Attorney (LPA)

Would you feel happy if a stranger had the power to decide how you should be treated medically or where you should be living?

If you are married and have assets in each of your names, imagine your spouse not being legally able to access those assets, whether it be a bank account or investment portfolio.

If you no longer have the mental capacity to look after your own affairs and you do not have an LPA, the Court of Protection will appoint a deputy to manage your affairs for you.

Normally a family member or close friend who will want to assist the individual is appointed but it can also be a local authority or even a care home if there is no one else who will act and bills need to be paid." Therefore it is always better therefore to prepare an LPA before a deputy is appointed by the Court of Protection.

What is a Lasting Power of Attorney

An LPA gives another person(s) (who is chosen by you) the legal right to look after your finances or health and welfare should you lose the mental capacity to do so.

According to the Social Care Institute for Excellence, "About two million people in England and Wales are thought to lack capacity to make decisions for themselves." This could be due to a mental health condition, a severe learning difficulty, a brain injury, a stroke or unconsciousness due to a sudden accident.

There are two types of LPA:

Property and Financial Affairs LPA

This allows you to choose someone you trust to make decisions about money matters such as buying and selling your property, dealing with your bills, running your bank accounts and investing your money. Once registered, and unless you have put a restriction on it, this type of LPA can be used by your attorney(s) straight away.

Personal Welfare LPA

This allows you to choose someone to make decisions about where you should live, how you should be treated medically, what you should eat and who you should have contact with. These decisions can only be taken on your behalf when the LPA has been registered and you lack the capacity to make the necessary decision for yourself.

Who can set up my LPA?

LPAs can be set up by anyone over the age of 18 and who still has mental capacity.

The LPA itself comprises of a 12-page form that needs to be completed and signed by various people. It is important that it is completed correctly and signed in the right way and in the appropriate order. Although you can 'do it yourself' or use 'will writing companies, we have always recommended that you should use the services of a qualified solicitor. Prices will vary.

Before the LPA can be used it needs to be registered with the Public Guardianship Office, which can be done either once you have completed the LPA or when the individual lacks mental capacity. As at 1st October 2015, registering the document cost £110 per LPA, so £220 if you want to set up both a property and financial affairs LPA and a personal welfare LPA. We would suggest that it should be registered immediately because registration takes time but also if there is anything wrong with the document it would be rejected and it maybe then too late to get another one completed.

When should I set up my LPA?

We recommend that you set them up sooner rather than later. As mentioned earlier loss of mental capacity can occur in people of any age and due to many types of incapacitation, these should not be considered only for older people who may suffer from dementia. Accidents such as that which happened to Michael Schumacher are a prime example.

Without a lasting power of attorney it can take the Court of Protection between six and 12 months to appoint a deputy. This is time when the person who has lost capacity has no one looking after their financial affairs, which can often cause great stress to their family. It could also place their nearest and dearest in financial turmoil.

What happens if I do not set up a Lasting Power of Attorney

If you don't make an LPA and become unable to make certain decisions for yourself, there may be a time when no one can do this for you, as no one will have the legal power to act on your behalf. This can make things like paying bills, including care fees, difficult, as well as making decisions about your future care and dealing with a financial adviser.

In this case, someone may need to apply to the Court of Protection to become your Deputy. This can give them similar powers to that of an attorney. A relative or friend can apply to be your Deputy, or a professional may be appointed.

The process of becoming a Deputy is a lot more time-consuming and expensive than an LPA. There are also ongoing requirements that a Deputy must fulfil such as paying an annual fee and also submitting an annual report. Also certain decision that an attorney could have made on your behalf would have to be referred to the Court of Protection for approval, so it can be easier for someone to be an attorney rather than a Deputy

How do I set up a Lasting power of Attorney

You can set one up by appointing a solicitor to do this for you or alternatively you can do this on line at the government website, a link of which is on our 'information page'. If you set this up on line, we would strongly recommend that it is registered immediately in case of any errors, which may not be able to rectified at a later date.

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