



Lasting Powers of Attorney

- Property and Financial Affairs
- Health and Welfare



Lasting Powers of Attorney are not just for the elderly.

Losing mental capacity could
happen at any age.

A power of attorney is a legal document by which an adult may appoint another to act on his or her behalf. The power can be given in respect of specific acts or decisions, or to act generally.

As a power of attorney is a very powerful document, careful consideration should be given to whom to appoint.

There are different types of powers of attorney, but the most durable is a lasting power of attorney (LPA). It is so named because, unlike other types of power of attorney, the attorney continues to have authority to act for the appointer even if the appointer loses capacity to make decisions for him or herself.

Powers of attorney can also have very practical uses even when the appointer has full capacity, in circumstances when it is not possible for him/her to make a decision, or sign a document personally (for example because he/she is abroad when an important legal document needs to be signed).

Planning for the Future

A lasting power of attorney is part of good planning for future eventualities. It may be that the attorney is never called on to make decisions for the appointer, but putting it in place provides a safeguard against the possibility of the appointer becoming unable to make decisions for him/herself.

If a person loses mental capacity without a lasting power of attorney in place, the alternative may be to apply to the Court of Protection for a deputy to be appointed to act. This can be a very time consuming and costly process. The Court is usually restrictive in the powers given to the deputy because, unlike an attorney who has been personally chosen by the individual, a deputy is a Court appointed person who may be unknown to the individual and who has been appointed simply because there is no other way of managing the individual's affairs.

Wills and LPAs

A Will takes effect on death and is the legal document that ensures that the testator's estate passes to his/her chosen beneficiaries. A lasting power of attorney, once it comes into effect, can remain in place for the remainder of the appointer's life, to ensure that his/her assets are protected and that all decisions made, are made in his/her best interests. It is useful to think of the lasting power of attorney as the document that gives an attorney authority during the appointer's lifetime, and the Will as the document that passes on that authority to the executors on death.

The powers of an attorney and an executor can never overlap, but given the nature of the appointment and the level of trust placed in the people appointed to carry out these roles, often the person chosen as an attorney is also the person appointed as executor of the Will after death.

Types of LPA

There are two types of lasting power of attorney:

- an LPA for property and financial affairs
- an LPA for health and welfare

A person can decide to have either or both types of lasting power of attorney.

A property and financial affairs lasting power of attorney enables one or more attorneys to act in relation to the ownership of assets and to make financial decisions for the appointer. Examples of property and financial affairs decisions are:

- making financial arrangements to fund nursing care
- carrying out banking activities and making payments from a bank account
- dealing with the sale of a house

A health and welfare LPA enables the attorney or attorneys to make decisions about the care of the appointer if he/she is no longer able to make decisions for him/herself. Examples of health and welfare decisions are:

- deciding whether care at home or care in a nursing home is the better option
- choosing the right nursing home
- giving instructions to carers about the daily routine of the appointer
- making decisions about medical treatment

Restrictions and Conditions

A lasting power of attorney can include restrictions

and conditions on the way an attorney may make decisions. It is also possible to specify whether, in the case of two or more attorneys being appointed, they should act jointly in making any decision, or whether any one of them can act alone in carrying out the role.

Formalities

There are safeguards in the legislation to ensure that the power given to an attorney is not mis-used. The lasting power of attorney form must be signed by the appointer and by a person who certifies that the appointer has understood the nature and effect of the form. It must also be signed by each attorney.

Once the lasting power of attorney has been completed, it cannot be used until it has been registered at the Office of the Public Guardian. As part of the registration process, a person can be chosen by the appointer as a 'person to be notified'. This person is given notice of the application for registration and has an opportunity to object to the registration process if he/she thinks that there has been an abuse of the process. This part of the registration process is optional.

Even once the lasting power of attorney has been registered, a health and welfare attorney does not have authority to act while the appointer remains capable of making decisions on health and welfare matters for him/herself. A property and financial affairs attorney will have authority to act once the form has been registered, but this authority can be postponed until capacity is lost, if the appointer prefers.

*“They’ve just been great,
our experience has been
brilliant.”*

Please feel free to contact **Michelle Rose** on **0117 314 5246** or at **mrose@vwv.co.uk**, about the contents of this brochure or any other private client matter. We give clear information about our costs and these will always be agreed with you in advance of any work being undertaken.

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