

Briefing Note

English Lasting Powers of Attorney

What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (LPA) is an English form of attorney. It is a legal document authorising someone (the Attorney) to make decisions on behalf of someone else (the Donor).

There are two types of LPA. One deals with a person's financial matters and is known as a Property & Financial Affairs LPA. The other deals with a person's health and wellbeing and is known as a Health & Welfare LPA.

The Donor may appoint one or more Attorneys for both types of LPA. The Attorneys can be the same or different. For example, a wife could appoint her husband to be her financial Attorney and appoint her husband and her children to act as her welfare Attorneys. The Donor can also appoint replacement Attorneys to act in the event that one or more Attorneys cannot act for any reason.

Where more than one Attorney acts under an LPA at the same time, the Donor can stipulate whether each Attorney should act jointly or independently for some or all decisions.

Who can be appointed as an Attorney?

An Attorney should be someone the Donor trusts and who will be able to deal with their affairs. This could be a family member or friend, professional adviser, or a combination of both. Attorneys must be aged 18 or over. A person who is or becomes bankrupt cannot act as a financial Attorney, although they can act as a welfare Attorney.

Property and Financial Affairs LPA

An Attorney appointed under this type of LPA will typically have a range of powers, including the ability to buy and sell property, operate bank accounts, deal with tax affairs and claim benefits. The Donor can provide Attorneys with specific instructions about what they must do when administering the Donor's financial affairs or alternatively can note preferences which provide the Attorneys with non-binding guidance as to what they would like to happen.

This type of LPA can be used after it has been registered with the Office of the Public Guardian (OPG) in England, the organisation which oversees LPAs. The Attorney can then assist the Donor with their financial affairs immediately, even while the Donor still has mental capacity. Alternatively, the Donor can provide that the Attorney can act only if and when the Donor loses mental capacity.

Health and Welfare LPA

An Attorney appointed under this type of LPA will have authority to make decisions relating to the Donor's health care and medical treatment, including where they live and day to day matters such as diet and daily routine. There is also the option to allow the Attorney to make decisions relating to life-sustaining treatment. Again, the Donor can provide Attorneys with specific instructions or note any preferences.

Importantly, this type of LPA can be used only after it has been registered with the OPG and the Donor has lost mental capacity and is therefore unable to make decisions themselves.

Duties of Attorneys

Attorneys are under a duty to act in the Donor's best interests when making decisions and acting for them. The OPG can investigate and take action where an Attorney is in breach of their duties. Among other things, Attorneys must:-

- Do everything they can to help the Donor make all or part of a decision themselves;
- Identify what the Donor would take into account if they themselves were making a decision;
- Be guided by the Donor's personal, political, cultural, moral or religious beliefs and values when making decisions;
- Benefit the Donor and not themselves;
- Act in good faith and within the authority provided under the LPA;
- Keep matters confidential; and
- Keep accounts and keep the Donor's funds separate from their own (financial Attorneys).

The Donor's Capacity and Safeguards

A Donor must have sufficient mental capacity to understand the nature and consequences of granting an LPA. The LPA must be signed not only by the Donor but also by someone who has known the Donor personally for at least two years or by someone with relevant professional skills, such as a solicitor or doctor. This "Certificate Provider" is confirming that in their opinion the Donor has the mental capacity required to sign the LPA. The LPA will then need to be signed by the Attorneys, to confirm that they are happy to act.

The Donor can also nominate who they would like to be notified when their LPAs are about to be registered with the OPG. For example, the Donor may wish for family members, their solicitor or doctor to be notified. There is a three week period before the OPG will register an LPA, to allow for objections to be raised. The OPG currently charge a registration fee of £82 per document.

This note is intended as a brief summary of English Lasting Powers of Attorney. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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