

Lasting Power of Attorney

Why use a Lasting Power of Attorney (LPA)

If you are concerned about you or your relatives losing the ability to manage finances or make decisions about their general welfare later in life, you may wish to consider a Lasting Power of Attorney (LPA). It is a painless way to pass responsibility to the people you love and trust most – but it only needs to come into force when the time is right.

Overview

An LPA lets you appoint someone to make decisions on your behalf and is normally used when the person loses the capacity to make those important decisions.

Types of LPA

There are two types of LPA

- Health & Welfare LPA
- Property & Financial Affairs LPA

You can choose to make one type of LPA or both.

Health & Welfare LPA

This enables you to choose one or more persons to make decisions about your welfare in issues such as:

- Medical care
- Moving into a care home
- Receiving or Refusing life-sustaining treatment

This type of LPA can only be utilised once someone is lacking capacity and unable to make their own decisions.

Property & Financial Affairs LPA

This enables you to choose one or more “attorneys” to make decisions about money and property on your behalf and would include things such as:

- Paying bills and collecting benefits
- Selling your home on your behalf if this becomes necessary.

With this type of LPA you can appoint someone to look after your property and financial affairs at any time and it does not depend upon the “capacity” of the person. Although if the person does have capacity, the attorney can only act if they are given permission to do so. You may be spending your retirement abroad but still have property and financial assets in the UK which you don't feel confident about managing from abroad. This is where a Property & Finance LPA could prove very useful.

How to arrange LPAs

Well, it is possible for you to download the forms and complete them yourself or complete an online tool which produces the documents for you. However these are not something to be taken lightly hence the need for over 100 pages of Guidance Notes that are recommended reading for anyone attempting to do it themselves!

We would always strongly advise that you speak to a suitably experienced solicitor who will be able to carry out your instructions and complete the formalities for you. This is particularly so where a person may already be at risk or in the event of family disputes, for example.

Of course with solicitors there is a cost involved but it has to be remembered that you are probably protecting assets that can run to many hundreds of thousands of pounds.

It may appear cheap to attempt to “DIY”, but the peace of mind of dealing with a solicitor who is regulated and insured and knowing that you have recourse if there are any problems, should help you to make the right decision.

The negative consequences?

So what can happen if an LPA is not arranged? Well this is where the Court of Protection will step in. There was once little knowledge of the workings of the Court of Protection, but since a number of daily newspapers have run articles, there is a greater understanding of how this Court works, and the following points may make you appreciate how important a correctly drafted LPA can be.

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- If someone loses their capacity to handle their own affairs, the Court of Protection may make rulings about money and property regardless of how much family support exists
- A 'deputyship', which is the Court's equivalent to an LPA is very expensive, time consuming and comes with much more official oversight (for instance having to file annual accounts) and less flexibility

As part of our regular reviews with clients we are always happy to discuss the use of LPAs and if necessary will be pleased to introduce you to a suitably experienced solicitor who will take you through the process with clarity, sensitivity and discretion.

Should an LPA be viewed as something that we are just thinking about for elderly relatives, or should younger people also consider setting up an LPA? Well, the simple answer is that all adults should have an LPA to protect against the unexpected – how many times do we hear about someone in a coma following a road traffic accident? The person could be in a non-responsive state for years and his wife could even lose control of joint banking arrangements which could be taken over by the Court of Protection, and the administration charges levied by the CoP can be quite startling. So yes, we would like to see everyone with the appropriate LPA in place!

We have reproduced an account of a lady whose husband was seriously injured in an accident and it details the frustrations, expense and emotional turmoil that resulted from her dealings with the Court of Protection. It was originally published in Saga magazine and the lady concerned, Heather Bateman, wants as many people to read her sad story and make up their own minds about the value of an appropriate LPA. The Heather Bateman Story can be found as a download on our LPA web page

Why not make contact and meet with one of our experienced, male or female advisers. An initial meeting to discuss your situation is without cost or commitment so come in for a coffee and find out how we might help



Please contact us

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