

THORNLEYS SOLICITORS

LASTING POWERS OF ATTORNEY



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The area of concern

We have an ageing population.

The problem of caring for the physical and emotional needs of the infirm and of the elderly is one which weighs heavily on the community and on individual carers.

Nearly 1 person in 6 is over retirement age but we all know that accident and illness can strike at any age without warning.

The problem of looking after elderly relatives is one aspect of this social problem. In the event of loss of capacity people can need help and support in relation to their property and financial affairs and in relation to their personal and welfare affairs including medical issues.

How Lasting Powers of Attorney can help

LPAs were introduced in October 2007. The Property and Affairs LPA covers the same ground previously dealt with by Enduring Powers of Attorney. EPAs made prior to October 2007 remain valid and can be registered but no further EPAs could be made after that date. LPAs have additional safeguards against possible abuse and are consequently more complicated. The process of making an LPA involves the Donor in identifying chosen Attorneys; a Certificate Provider to confirm the Donor's capacity and the proper circumstances of making the LPA with inappropriate influence; LPAs have to be registered before they can be used and usually one or more people need to be notified as part of the registration process. The procedures are designed to encourage involvement of the relevant persons and a degree of transparency.

Why make an LPA?

It gives the opportunity to choose the person or persons that you wish to make decisions about your property and affairs and decisions about your personal welfare and medical circumstances. People will often choose their spouse or close relatives, children or close friends. It is also possible to appoint professional Attorneys such as your solicitor if you wish.

What happens if I do not make an LPA?

If you lose capacity then the Court of Protection can appoint a Deputy to manage your affairs under the Court's supervision.

Advice

You may have the view that you would rather choose your own carers and wish to plan in advance accordingly. You may welcome the additional flexibility and authority that being an appointed attorney gives, which enables them to care more effectively. As part of your planning arrangements for life's ups and downs we recommend that you consider LPAs as an option. The topic is more complicated than a short leaflet can cover and the particular issues arising will depend on particular circumstances.

Lasting Powers of Attorney - Comments on issues regularly raised

(i) What is a Lasting Power of Attorney?

An LPA is a recently introduced opportunity for a Donor to give their chosen Attorneys the authority to make decisions in relation to future care and support needs in two areas. The Powers are usually used when the Donor has lost capacity to make their own decisions.

The Personal Welfare LPA delegates powers in relation to Personal Welfare issues – where should the person be concerned be best looked after; what medical decisions should be made on their behalf. There is an option to delegate the power to make medical decisions which might have life or death consequence.

The Property and Affairs LPA delegates powers including investments, operating bank accounts and sorting out State benefits.

In general terms the Attorney has to act in your best interest and have regard to the Code of Practice generated by the Mental Capacity Act 2005.

The process of making LPAs contains within it the opportunity to limit the powers that are delegated and to give guidance on the exercise of those powers to your Attorneys. In that sense it gives you the opportunity to plan for the future in terms of choosing your carers/Attorneys and guiding them as to your wishes.

(ii) Are Enduring Powers of Attorney still effective?

New EPAs cannot be made following the introduction of the LPA arrangements. However EPAs made before October 2007 remain effective and can be registered in the same way that new LPAs can be registered. EPAs used to cover much the same ground as the new Property and Affairs LPA. The Property and Affairs LPA has more safeguards and flexibility. Our clients who have made old style EPAs often decide to retain them and make a new style LPA for personal welfare issues.

(iii) Who can be appointed as an Attorney?

Most are thinking in terms of their spouse, children, close relatives or close friends. You cannot appoint an Attorney who is under 18 years of age and in respect of a Property and Affairs LPA you cannot appoint a bankrupt. An Attorney has significant

powers and it is very important that you appoint someone that you can trust. You can appoint more than one Attorney and instruct that they should act jointly or give them authority to act jointly or independently. You can appoint professional Attorneys. You can appoint different Attorneys for different purposes and you can appoint replacement Attorneys to guard against the situation of your initial Attorneys becoming unable for some reason to continue in that role.

(iv) What practicalities are involved in making and using LPAs?

There are key people that you will have to identify or your solicitor can identify together in discussion - the Attorneys; the Certificate Provider who reassures in relation to capacity and absence of inappropriate influence; and the persons to be notified. There are key decisions to be made about whether Attorneys are to act jointly or jointly and independently; what approach is to be used in relation to medical decisions and in particular life and death medical decisions. Having obtained those preliminary instructions your solicitor can then draft sets of forms for your consideration. You may be referred to the Office of the Public Guardian's website or particular information leaflets for further background consideration. Once the forms are agreed and satisfactory there are signing arrangements to be made. You may wish the LPAs to be registered. A court fee of £120 for the registration of each separate LPA is incurred. Then there is a procedure involving a period of 5 weeks or so when any persons concerned can register objections. There can be delays in the Office of The Public Guardian in terms of the registration process. At the end of that process the LPA is returned stamped on each page. That final version of the LPA can be lodged without charge at our offices. The best LPAs are those that are never used and remain in our Deed room as a form of insurance against loss of capacity which never arises.

At Thornleys, we are committed to providing the best possible professional service to all of our clients, both business and personal. We have produced our Factsheets and Articles as part of this service but they are intended only as a guide to highlight general issues which may be of interest to our clients. They are not a substitute for full professional advice. Specialist advice and assistance should be sought in relation to any particular needs or circumstances. Accordingly, no responsibility for loss, or consequential loss however occasioned to any person acting or refraining from acting as a result of any material in this publication can be accepted by Thornleys, howsoever caused.

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