

Lasting Powers of Attorney (LPA)

What is a Lasting Power of Attorney and how does it work?

The Law states that if you have the mental capacity to make a decision for yourself, then you have the legal right to make that decision, even if your decision is considered by others to be unwise.

What happens if you do not have the mental capacity to make a decision for yourself? This will depend on whether you have made an LPA (or its predecessor the Enduring Power of Attorney).

If you lack mental capacity to make decisions and have not granted an LPA then the power to make decisions on your behalf is vested in the courts. The courts have complex rules which need to be followed and members of your family would have to apply to the court for orders which give them authority to make decisions on your behalf. This is slow, complicated and expensive with fees being paid on an annual basis and every time the court are asked to make further orders.

An LPA can help the family avoid most of these difficulties. The LPA is a document which gives one or more persons (called "attorneys") power to make decisions on your behalf if you lack the capability to do so. Your attorneys have to do everything they can to assist you to make a decision yourself if you are capable of doing so and can only make the decision on your behalf if they are absolutely certain that you are incapable of doing so. There are 2 types of LPA:

Property and financial affairs- This is an LPA that allows your attorneys to make decisions relating to your property and finance. It can be drafted so that your attorneys can make the financial decisions for you whilst you do not lack capability. This could be useful if you want your attorneys to carry out financial transactions on your behalf whilst you are unable to do, for example as a result of physical illness or because you are away on holiday; and

Health and welfare- This allows your attorneys to make

decisions relating to your health and welfare including where you live, what medical treatment you receive and who does and does not have contact with you. The most popular feature of a health and welfare LPA is that your attorneys can also be given the power to make decisions about whether you are to receive life-sustaining treatment or not. Individuals who have already granted Enduring Powers of Attorney which deal with their financial affairs should still consider a health and welfare LPA as the Enduring Power of Attorney deals with financial matters only.

A person can make either or both types of LPA. There are procedures which need to be followed to create a valid LPA and before an LPA can be used it has to be registered with the court. Registration usually takes around three months and you can choose whether or not to register an LPA with the court immediately. The court will charge a fee for dealing with the registration. You could delay the registration of the LPA until it becomes necessary for it to be used. In this situation, if you never reach a stage where you lack capacity you will not have paid a court fee for an LPA that is never used. This may be appropriate for people who, if they reached a stage where they lack capacity, have family members or friends who could assist them informally for at least a few weeks whilst the registration process takes place. Alternatively, if you do not have family members or friends who can assist you or want the peace of mind of knowing that the LPA exists and is ready to be used if necessary it may be best to register the LPA straight away. We can advise you further about registration and you can then make an informed choice which best suits your own circumstances.

To conclude, whilst an LPA is not without its procedures and cost, those procedures and costs are small in scale when compared with the fees and delay which are suffered when a person lacks capacity and has not made an LPA.

Further information and advice:

If you would like to discuss LPA's with us please contact a member of the Probate and Trusts team:

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