

LASTING POWER OF ATTORNEY (LPA)

Giving Authority to another person to act on your behalf has always been a matter for serious consideration. With the replacement of the old style Enduring Power of Attorney in favour of the Lasting Power of Attorney (“LPA”) came a process substantially more complicated and onerous than before. We set that out for you in this focus on.

*In spite of the process, the time to make your LPA is **now**, whilst you are mentally capable, since the downside of not having one and losing your capacity is far more onerous on your pocket and your family than making one now.*

The types of LPA

There are two types which can be created. These enable you to appoint people you trust to act on your behalf as attorneys should you become unable to deal with matters yourself or lose the mental capacity to do so:

- **A Property and Affairs LPA** deals with your property and affairs. It enables you to give authority to someone over such matters as your personal property and belongings, land, financial assets, benefit entitlements and even pets.
- **A Welfare LPA** deals with your personal health and welfare. It enables you to give authority to someone to make decisions concerning such matters as where you live, your medical treatment and even, in extreme medical emergencies, whether to refuse medical treatment altogether.

If you elect to create both types of LPA, your attorney for each can be the same or different persons.

Protective Procedures

At the time of signing the LPA, you must choose someone to act as your certificate provider: this is someone who will certify you have both the necessary mental capacity to create a LPA and that they have discussed it with you without your chosen attorney/s present.

These notes relate only to the laws in England and Wales. They are by no means exhaustive but we hope that they will help avoid some of the difficulties which may arise. Please raise any queries as soon as possible.

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The LPA cannot be used until it has been registered with the Court of Protection. You have the opportunity to nominate up to five people to be notified when the document is to be registered.

Guidelines and prescribed information

Under the new rules, certain prescribed information must be read and understood by

- anyone planning to create a LPA
- anyone acting as a certificate provider
- anyone taking on the role of attorney.

Some of this prescribed information is in the LPA form itself and some is contained within guidelines issued by the Office of the Public Guardian (“OPG”).

Anyone taking on the role of attorney must also have regard to the new Code of Practice relating to the Mental Capacity Act, contained in a lengthy document.

How can we help? It is not necessary to have your LPA prepared by a solicitor; the forms and guidelines are readily available from the OPG directly or from their website (www.publicguardian.gov.uk). However, if you require our assistance, we shall be happy to act.

Our Service As the process of setting up an LPA is necessarily a staged one, we can offer the following:

1. Consideration of your needs

An initial meeting to discuss with you the type of LPA you require, the points you will need to consider, the forms needed and the procedures necessary to complete the process.

We will supply you with the necessary LPA forms, guidelines for completion of the LPA and the general guidelines referred to above. We can also supply copies of the Code of Practice. We suggest you allow 1 hour for such a meeting.

2. Completion of the forms

Once you have decided to proceed with a LPA, you may wish to have a further appointment either to assist you in completing the forms or to check your own completed

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forms. We suggest you allow 1 hour to assist in completing each form, less if you are just wanting us to check what you have already done.

Please note that you will have to nominate your own certificate provider: rwp solicitors are not able to act as certificate provider. We would suggest that your GP may be a good choice for this purpose, although you are likely to have to pay a fee.

Once you and your certificate provider have completed your parts of the form, you must arrange for your attorney/s to complete and sign their parts and their signatures must be witnessed.

3. Registration

If you require assistance with the process of registration of the form, you can make an appointment with us to go through the necessary application form, to prepare and post the notices required in your particular case, to submit the application to the OPG and monitor registration. We suggest you allow around an hour of time for each document to complete this process. The Court fee is currently £150 per LPA registered.

4. Advising your Attorneys

Provided there is not conflict of interest, we can advise your Attorneys on their role and duties and can assist them in completing of their part of the LPA document. They will need to have read and be familiar with the guidelines and the Code of Practice. Again we suggest allowing an hour of time for this purpose.

If you would like to make an appointment concerning your LPA please contact Kathryn Tarry on 01189 842266 or email to kathryn@rwp-solicitors.co.uk

REMEMBER – MAKE YOUR LPA NOW WHILST YOU STILL CAN

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