

Lasting Powers of Attorney

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The future is an unknown quantity and it is prudent to make provision for this whilst we are able.

A LASTING POWER OF ATTORNEY (LPA) is an important legal document which enables those over 18, with the mental capacity to do so, to appoint others to act on their behalf.

There are two types of LPA introduced into English law by the **MENTAL CAPACITY ACT 2005 (MCA)**

- A Property and Affairs LPA relating to finances
- A Personal Welfare LPA relating to health and personal welfare matters.

LPA's appoint one or more adult persons (**Donor**) to act on behalf of the person who has made the LPA (**Attorney**) enabling the Donor to make decisions the Attorney would have made for himself

An LPA can be used whilst the Donor still has valid mental capacity but its main purpose is that its powers can be exercised when the Donor has lost the necessary mental capacity to validly make his own decisions.

The definition of the appropriate mental capacity for different circumstances is set out in the MCA and the Donor must act in accordance with MCA, the Donors instructions in the LPA and the Code of Practice

An LPA can be made at any time by an adult with sufficient mental capacity but cannot be used by the Donor until it is registered with the Office of the Public Guardian (**OPG**). A Donor can register the LPA whilst he has the capacity, an Attorney can register the LPA at any time

It is very important that the Donor fully appreciates the nature of the power he is giving to his Attorney. Similarly the Attorney must understand the duties and obligations he is assuming, the Attorney must have regard to the relevant guidance in the Code of Practice which is not insubstantial.

LPA's have now replaced the former Enduring Powers of Attorney although those EPAs properly created before 1st October 2007 can still be used.

In addition to the Donor and the Attorney named in the LPA it is necessary to identify others who will be notified when the LPA is registered. This is one of the key safeguards protecting the Donor. These named persons can object to the registration of the LPA if they have concerns about the situation.

A Certificate Provider will be required to confirm that the Donor understands the steps he is taking when making the LPA and does so of his own free will. This is another safeguard in the process.

Menneer Shuttleworth

Solicitors

Witnesses will be needed to the signatures of the Donor and the Attorney.

The choice of the Attorney named persons and Certificate Provider are all very important decisions to be made by the Donor once he fully understand the implications of creating an LPA.

Once these decisions have been made the appropriate forms can be completed and registered.

Menneer Shuttleworth solicitors are well placed to assist in discussing with you and advising on all the necessary steps involved in this important decision.