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Making a Property and Affairs Lasting Power of Attorney (Part 2)

What is a Property & Affairs Lasting Power of Attorney?

This document allows your Attorney to make decisions on your behalf about your property and affairs, including paying your bills, collecting your income and benefits or selling your house subject to any restrictions or conditions. It does not allow your Attorney to make decisions about your personal welfare; this would need to be done separately by preparing a Personal Welfare Lasting Power of Attorney.

What will a Property & Affairs Lasting Power of Attorney allow my Attorney to do on my behalf?

This person is called a "Property & Affairs Attorney(s)" and it will depend on the powers that you give them when making your Lasting Power of Attorney. The Attorney will be able to make exactly the same decisions you make now about your money and property. These decisions might include:

- 1) Buying or selling any property (land, buildings or other assets) you own;
- 2) Opening, closing or operating any bank, building society or other account containing your funds;
- 3) Claiming, receiving and using all benefits, pensions and allowances on your behalf;
- 4) Making all tax returns and adjusting and settling any claim for tax;
- 5) Paying your household expenses;
- 6) Paying for private medical care and residential care costs;
- 7) Making gifts on your behalf, including any limits on the size of such gifts or the people that receive them, subject to any restrictions;
- 8) Purchasing out of your income or capital, a vehicle or any other equipment which may be required for your benefit; and
- 9) Implementing tax planning or similar arrangements (with the approval of the Court of Protection)

If you make an LPA that does not contain any restrictions or conditions, **once the LPA is registered**, your Attorney(s) will be able to do **anything** that you can do now in relation to your property & affairs.

It is important when making your LPA, that you are satisfied that you have given your chosen Attorney(s) the right powers to enable them to make the decisions you want made about your property and affairs in the future, should you lack the capacity to make them yourself.

Who can I choose to be my Property & Affairs Attorney(s)?

Appointing an Attorney to make decisions on your behalf is a very important decision. If you want them to, your Attorney(s) will be able to make any decision about your property and affairs that you make now, even when you have the

capacity to make them yourself. Alternatively, you could limit the type of decisions that they would make for you by specifying this in your Lasting Power of Attorney. For example, you could specify that your Attorney will not be able to act until you lack capacity.

It is important to choose someone you know well; someone you trust to make decisions in your best interests and someone who is happy to take on the role.

Can I appoint more than one Attorney?

You can appoint as many Attorneys as you wish but it is important that you consider how you are appointing them. You will need to specify whether you want to appoint your Attorneys to act:

- Together; or
- Together and independently; or
- Together in some matters and together and independently in others.

You should ensure that you and they fully understand how they have been appointed to act and what this will mean in practice when they are making decisions for you.

What is the difference between appointing Attorneys together or appointing them together and independently?

Attorneys appointed together **must always** act together. They must **all agree** before doing anything on your behalf. If one Attorney does not agree with a proposed action, that decision cannot be made. Donors often use this as a safeguard to ensure that all those they trust to make decisions for them are in agreement. However, you must remember that this could delay decisions that may need to be taken at short notice.

Attorneys appointed together and independently can act on their own and they can act together. This means, for example, that **any one** of your Attorneys appointed together and independently can decide on a particular issue. This can be useful if one of your chosen Attorneys is not available all of the time to help make decisions on your behalf, for example, if they work abroad for long periods of time.

You can also appoint your Attorneys to act together in respect of some matters and together and independently in respect of others; – for example, you could appoint your Attorneys to act together when making decisions.

Can I include a restriction or condition that my LPA is only registered when I lack mental capacity?

Yes you can but you need to be careful and you must specify how the Attorney is

to show that you lack mental capacity. For example, you can include a condition that your Attorney(s) is not to register the LPA until they are able to obtain medical evidence stating that you have lost capacity.

What other restrictions or conditions can I include in the LPA?

You can include restrictions and/or conditions in your LPA which will allow you to decide which decisions you want your Attorney to make.

Conditions: Your Attorney must act in a particular way.

Restrictions: your Attorney will be limited by their powers.

If there are any conditions or restrictions that are considered too complicated or impractical it is possible that the Office of the Public Guardian would consider cancelling that condition or restriction.

Can my Attorney(s) sell my home?

Yes, provided that decision is in your best interests and you have not restricted them by preventing them from doing so.

Can my Attorney(s) gain access to my Will?

No. If you have not included a condition in your LPA allowing your Attorney access to your Will, they will not be entitled to have access to any Will or Codicil you have made.

Can my Attorney(s) make gifts from my money?

Yes. Your Attorney can make limited gifts from your money as long as you have not said they cannot by including any restrictions in your LPA. You can exclude the power to make gifts in your LPA.

However, you can specify that your Attorney can only make gifts to people who are related to or connected with you on occasions such as birthdays, weddings, civil partnerships, anniversaries or any other occasion when you would usually give gifts to your family, friends or associates.

The value of any gift given by your Attorney must be reasonable compared to everything you own.

What is a replacement Attorney and when might I need one?

Replacement Attorneys are people you can appoint to act in place of an Attorney who is no longer able to or does not wish to make decisions as your Attorney. For example, you may choose your spouse to be your Attorney, then choose your son/daughter as a replacement if your spouse should die or can no longer act on your behalf.

You can choose as many replacement attorneys as you want and they can act in place of any of your Attorneys but you must specify how they are to be appointed.

If you want to appoint a replacement Attorney, you do so at the time that you make your LPA and your replacement Attorney has to sign up to taking on this role like any other Attorney. It is your decision whether or not to appoint a replacement and it is not a requirement of an LPA that you do so.

Why do I have to state people to be notified of the registration?

Selecting people for notification of an application to register an LPA is a key safeguard to the document. Listing people allows you to decide at the time you make your LPA who you would like to be notified that registration of your LPA is taking place. Once notified, if the people you choose have concerns about the registration of your LPA – for example, if they feel that you were put under pressure to make it – they can object to the registration.

Who should I choose to be notified?

You can select up to 5 people and it is up to you to select the people you want to be notified. However, it is important to remember that the person/people you choose should know you well enough to be able to raise any concerns they may have about an application to register your LPA.

It is very important to keep the addresses/contact details of your named persons up to date and keep this with your original LPA as once your LPA is completed and signed, you cannot make any amendments to it.

What happens if I do not have or want anyone to be notified?

We advise that you try to include named persons where possible. However, if you decide not to name anyone or if you do not have anyone suitable to name, then you must have two separate Certificate Providers.

What is a Certificate Provider?

A Certificate Provider is a person **that you must select** to complete a Part B Certificate of the LPA form, confirming that you understand the LPA and that you are not under any pressure to make it.

Why do I need this certificate?

The certificate is a vital part of the LPA document. Without it, the LPA is not valid and cannot be registered. For this reason, the certificate **must not** be detached from the LPA.

Who can I choose as a Certificate Provider?

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Solicitors

Please see our separate information leaflet on this subject.