

# Lasting Power of Attorney Guide



## **Lasting Power of Attorney, what is it?**

These are documents that enable you to give legal authority to a person or persons whom you trust, called Attorneys, to manage your affairs for you or make decisions on your behalf when you are not in a position to do so yourself, for example following an accident, stroke, or the onset of dementia.

### **Determining an Attorney:**

The donor can usually designate one to four attorneys, but it is critical that the attorneys are someone they know and trust to work in their best interests.

There are a few ways in which an attorney can act:

1. The first being jointly - this would mean that the attorney has ultimate say on every decision, it is their unanimous decision.
2. Jointly and severally - decisions will be made either by themselves entirely or with other attorneys.
3. Jointly for some and jointly and severally for others - this would mean the attorney is able to make decisions by themselves in some cases but together on others.

### **Capacity of the donor:**

The donor must be over the age of 18 and have mental capacity before an LPA may be established. This implies that they must comprehend: who they want to make the LPA, whether they understand what an LPA actually is, who their attorney will be, how they have come to that decision, and finally if they comprehend what power the attorney has.



It is possible that the donor will not have the requisite ability if he or she is unable to make his or her own decisions owing to disrupted mind or brain function, such as with late-onset dementia. Essentially, the donor should be evaluated to see if they are capable of making a certain decision at a specific moment. A GP or an independent mental capacity advocate can examine the donor's capacity if you are unsure.



### Health & Welfare:

Once filed with the Office of Public Guardian (OPG), a Health and Welfare LPA can only be invoked when the donor loses mental capacity.

- Exercise and nutrition requirements are examples of day-to-day considerations
- Medical attention
- Decisions on whether to live in a care home or in protected housing
- Options for in-home care
- Sustainable treatment of life





## **Estate and Monetary Affairs:**

As soon as a Property and Financial Affairs LPA is registered with the OPG, it can be used. The attorneys can only operate with the donor's authorization while he or she has capacity.

- Keeping track of financial accounts.
- Expenses.
- Obtaining benefits etc.
- Making decisions about purchasing/ selling/ renting housing.

## **Issues with LPA:**

If you lose mental capacity, your family will have to file an application with the Court of Protection to gain access to your assets or make choices about your care. In most cases, dealing with the Court of Protection is an extremely expensive and time-consuming process that only grants limited access. It is possible that you may have to repeat the process numerous times to gain access. Without a Health and Welfare Lasting Power of Attorney, neither you nor your family will be able to select which care facility you are able to go to, your daily routine, or how you'll be handled in medical situations if you lose capacity. If you do not have a Property and Finance LPA, neither you nor your family will be able to access your bank accounts if you lose capacity or become seriously ill. This includes scenarios in which you must pay for your own medical or food expenses.

For further information please contact:



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