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GUIDE TO

LASTING POWERS OF ATTORNEY

PREPARING IN ADVANCE OF VULNERABILITY AND INCAPACITY

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Preparing in advance of vulnerability and incapacity

It is difficult to comprehend that you would ever lose the ability to manage your own affairs, but mental and physical incapacity can happen to anyone at any time. In England and Wales, a Lasting Power of Attorney (LPA) is a legal document that allows you to appoint one or more people to make decisions on your behalf during your lifetime.

The people you appoint to manage your affairs are called the 'attorneys'. A LPA is a completely separate legal document to your Will, although many people put them in place at the same time as getting their Will written as part of wanting to plan for the future.

Some people may have the misconception that by making a LPA, you are giving away control – in fact, the opposite is true. By preparing in advance of vulnerability and incapacity, you are able to detail who you want to help you, how you want to be helped and when.

Choosing an attorney

Your attorney can be given complete authority over your financial and personal affairs, so you should choose someone you trust to make decisions in your best interests. It could be your partner or spouse, a family member, a friend, or a professional (such as a solicitor). You may need to pay a fee to a professional attorney.

You can choose more than one attorney, and you will have to specify whether they can make decisions on their own, if they must all agree before a decision is made, or if they can make some decisions together and others separately.

During your lifetime

The LPA has to be registered with the Office of the Public Guardian (OPG). Thereafter, a health and welfare attorney can only act if or when the donor loses capacity. A property and financial affairs attorney can act before or after the donor lacks capacity (unless the donor has specified otherwise).

Once you have an LPA in place, you can have peace of mind that there is someone you trust to look after your affairs if you became unable to do so yourself during your lifetime. This may occur, for example, because of an illness, old age or an accident.

Having an LPA in place can allow your attorney to have authority to deal with your finances and property, as well as make decisions about your health and welfare. Your LPA can include binding instructions together with general preferences for your attorney to consider. Your LPA should reflect your particular wishes so you know that the things that matter most would be taken care of.

Required legal capacity

You can only put an LPA in place whilst you are capable of understanding the nature and effect of the document (for example, you have the required legal capacity). After this point, you cannot enter into an LPA, and no one can do so on your behalf.

Many people don't know that their next of kin has no automatic legal right to manage their spouse's affairs without an LPA in place, so having to make decisions on their behalf can become prolonged and significantly more expensive.

A Lasting Power of Attorney for health and welfare can generally make decisions about matters including:

- Where you should live
- Your medical care
- What you should eat
- Who you should have contact with
- What kind of social activities you should take part in

You can also give special permission for your attorney to make decisions about life-saving treatment.

A Lasting Power of Attorney for property and financial affairs decisions can cover:

- Buying and selling property
- Paying the mortgage
- Investing money
- Paying bills
- Arranging repairs to property

Managing your affairs

Without an LPA in place, there is no one with the legal authority to manage your affairs, for example, to access bank accounts or investments in your name or sell your property on your behalf. Unfortunately, many people assume that their spouse, partner or children will just be able to take care of things, but the reality is that this simply isn't the case.

In these circumstances, in order for someone to obtain legal authority over your affairs, that person would need to apply to the Court of Protection, and the Court will decide on the person to be appointed to manage your affairs. The person chosen is appointed your 'deputy'. This is a very different type of appointment, which is significantly more involved and costly than being appointed attorney under an LPA.

If you wish to have peace of mind that a particular person will have the legal authority to look after your affairs, and you want to make matters easier for them and less expensive, then you should obtain professional advice about putting in place an LPA.

Health and Welfare Lasting Power of Attorney

Allows you to name attorneys to make decisions about your healthcare, treatments and living arrangements if you lose the ability to make those decisions yourself. Unlike the Property and Financial Affairs LPA, this document will only ever become effective if you lack the mental capacity to make decisions for yourself.

If you can't communicate your wishes, you could end up in a care home when you may have preferred to stay in your own home. You may also receive medical treatments or be put into a nursing home that you would have refused if only you had the opportunity to express yourself – and this is when your attorney, appointed by the LPA, can speak for you.

Property and Financial Affairs Lasting Power of Attorney

Allows you to name attorneys to deal with all your property and financial assets in England and Wales. The LPA document can be restricted, so it can only be used if you were to lose mental capacity, or it can be used more widely, such as if you suffer from illness, have mobility issues or if you spend time outside the UK ■

WHAT IF SOMETHING HAPPENS TO INCAPACITATE YOU DURING YOUR LIFETIME?

Protecting your interests and easing the burden on your loved ones is not just about making a Will. Wills deal with distribution of your assets on your death, but what if something happens to incapacitate you during your lifetime, whether temporarily or permanently? Finding answers can be hard – please contact us for more information.

THE LPA HAS TO BE REGISTERED WITH THE OFFICE OF THE PUBLIC GUARDIAN (OPG). THEREAFTER, A HEALTH AND WELFARE ATTORNEY CAN ONLY ACT IF OR WHEN THE DONOR LOSES CAPACITY.

TIME TO GET YOUR AFFAIRS IN ORDER?

It's not easy to think about a time when you won't be able to make your own decisions, but it can help to be prepared. Getting your affairs in order can be carried out at many different stages of life and is sometimes motivated by a range of very sensitive personal reasons.

If you would like to review your situation or discuss the options available, please contact us for further information – we look forward to hearing from you.

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