

KEY FEATURES AND BENEFITS 11

Lasting Powers of Attorney (LPA):

✓ KEY FEATURES AND BENEFITS 1 OF 2

WHAT IS POA?

Powers of Attorney (POA) have been serving the public for centuries. They are powerful legal documents which allow an individual (Donor) to appoint a person of their own choice (an Attorney), to look after their affairs should they at a later stage no longer wish to make these decisions, or lack the capacity to manage their affairs themselves.

✓ From October 2007 two new Powers came into effect

Lasting Power of Attorney for Property & Financial Affairs

This allows the persons appointed (the Attorneys) to make decisions about paying bills, dealing with banks and investments, arranging and collecting benefits and even selling property on behalf of the Donor.

Lasting Power of Attorney for Health and Welfare

This allows the Attorney(s) to make decisions for the Donor such as care issues, where the Donor lives, and, where the Donor wishes, giving or refusing consent to life sustaining treatment.

As the name of the power suggests ('lasting') both of these powers continue to be valid even after the Donor loses capacity. Once registered, a Lasting Power of Attorney for Property and Financial Affairs can be used by the Attorneys at any time, **HOWEVER** a Lasting Power of Attorney for Health and Welfare can **ONLY** be used when the Donor has lost mental capacity.

Lasting Powers of Attorney have replaced Enduring Powers of Attorney in England, Scotland & Wales, but not Northern Ireland. EPAs made prior to 01/10/2007 continue to be valid.

WHAT IS POA?

No doubt you have taken care to ensure that your assets go to the right people when you die by making a Will. If you care enough about what happens to your assets after you die, then you ought to care even more about managing your affairs during your lifetime.

If you were to become mentally incapacitated as a result of an illness or an accident, then without an LPA in place, the **ONLY** way your financial affairs can be managed is by an application being made to the Court of Protection for a Deputyship order.

The applicant must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to help care for. Medical evidence as to capacity will also need to be obtained.

This process costs a considerable amount of money and can take anything between 12 weeks and 10 months, by which time your finances could be seriously damaged.

Even worse, a Judge will make the final decision as to who is appointed as the Deputy, and this may not be who you would have wished to manage your affairs.

The appointment **does not even have to be a family member**. The Court could decide to appoint a Panel Deputy (a retired Solicitor or Barrister who works for the Office of the Public Guardian) or a Local Authority.

While the Court of Protection is important to safeguard the interests of people who don't have close friends or family, if you want your loved ones to be able to care for you and make decisions on your behalf, you should ensure that you

make an LPA while you are still able to do so. Below are some of the reasons why you should make a Lasting Power of Attorney (LPA) in preference to a judge appointing a Deputy to manage your affairs.

PROPERTY & FINANCE DEPUTYSHIP VS LPA PROPERTY & FINANCE

! Deputyship:

You have no control over who is appointed as your Deputy; this may not be who you would have wished.

There are also Court fees involved and the Deputy has to take out a Security Bond to cover their actions. This is paid annually and the amount is set by the Court. The more assets a person has, the higher the Bond. Depending on your Supervision Order the Court can also take a retainer. This amount is not disclosed until your application is agreed and is, again, dependent on the amount of assets the person has. Supervision Fees are also applied annually and vary.

A Deputyship order will set out the extent of the powers granted to the Deputy, for example, they may not be allowed to write cheques over £500 without the permission of the Court.

Any major decisions, such as selling a property, may require the Court's permission.

The OPG assesses each case and places it in a band where it will receive either a low, medium or high level of ongoing supervision. The Deputy must report to the Court/OPG at all times and may have to submit annual accounts for Court approval and receive periodical visits by a Court Visitor.

A Deputy must account for every penny spent and any requests for money must be made to the Court in writing.

The application for Deputyship is complex and the Deputy must provide personal information about themselves, their family, their own finances and the relationship with the person they wish to care for.

✓ Setting up an LPA allows you to plan in advance:

- The people **you want** to make those decisions for you (your Attorneys).
- The decisions **you want** to be made on your behalf e.g. life sustaining treatments.
- How **you want** your Attorneys to make those decisions e.g. jointly.

Once the LPA is registered with the OPG your Attorneys are able to make financial decisions on your behalf and they must follow the principles as set out in the Mental Capacity Act when making these decisions.

Your Attorneys are free to act on your behalf without involvement from the OPG, unless a concern is raised as to how the Attorney is acting.

Minimal personal details are required for both the Donor and the Attorney to set up the LPA, and it is a much less intrusive process.

Setting up an LPA is also a much quicker process than applying to the Court for a Deputyship order.

There are thousands of people that are registered with the Court of Protection who are deemed mentally incapable to act on their own behalf. Their affairs are placed under the jurisdiction of the Court.

This would mean that those seeking to care for you, such as your family, would have the added stress of having to deal with officials every time a decision needed to be made.

This sheet contains only general planning and is not to be construed as advice for any personal planning. Each strategy recommended is based on individual circumstances.

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