

Lasting powers of attorney

From the 1st October 2007, you are able to make a new type of power of attorney, called a 'lasting power of attorney' (LPA). A power of attorney is a legal document where a person gives another person or persons (the attorney) authority to make certain decisions on his or her behalf.

Types of LPAs

There are two types of LPAs:

- A property and affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify
- A welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment

Your Attorney

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case they die or otherwise cannot act for you.

When can the Attorney act?

The attorney will only be able to act when the LPA has been signed by you and your attorney, certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm there has not been any fraud or another reason why you cannot make the power. It must then be registered with the Office of Public Guardian before it can be used. The financial LPA can be

used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

Existing Enduring Powers of Attorney

Any enduring power, validly made before 1st October 2007, will continue to be able to be used but only in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a welfare LPA.

What happens if you have not made a LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a welfare LPA.

The Certificate Provider

As an important safeguard against abuse, one of the requirements to validly make a lasting power of attorney is for the document to be signed by an independent person who can confirm that the person ('the donor') making the power:

- Understands its purpose and the scope of the authority it gives to the attorney;
- No fraud or undue pressure is being used to induce the person to make the power; and
- There is nothing else that would prevent the lasting power of attorney from being created.

The choice of a suitable certificate provider is a personal and important decision.

There are two types of certificate provider:

- A knowledge-based certificate provider who is someone who knows the person making the power personally for the previous two years or
- A skill-based certificate provider who has relevant professional skills and expertise.

A skills based certificate provider must be one of the following:

- A registered health care professional, such as a General Practitioner
- A registered social worker
- A barrister, solicitor or advocate
- An Independent Mental Capacity Advocate
- Someone who considers they have the relevant professional skills and expertise to be a certificate provider

A certificate provider cannot be:

- Under 18 years of age
- A member of the either the donor or his attorney's family
- A business partner or paid employee of the donor or attorney(s)
- An attorney appointed in the proposed or another lasting power of attorney or any enduring power of attorney made by the donor
- The owner, director, manager or an employee of a care home in which the donor lives (including care homes with nursing homes) or their family member or partner

The advantage of having a knowledge based certificate provider is that they are unlikely to charge you for this. However, if challenged, they could be called to the Court of Protection to justify their opinion. They would need to show to the Court that they know how to assess capacity under the Mental Capacity Act 2005. If the challenge were successful the LPA would not be valid. A skills based certificate provider would usually charge, but would be expected to have higher skills and expertise than the knowledge based adviser.

Whoever the donor chooses, he should be sure that the person would be able to demonstrate the following:

- Understand what is involved in making a lasting power and its effect;
- Has the skills to assess the donor's understanding of the power and its consequences;
- They can verify that the donor is not acting under the undue pressure of another person, or there are any other reasons that the power should not be created;
- Have detailed knowledge of the donor's financial and personal situation, to be satisfied that there is no fraud involved in the making of the power.

We provide a monthly Wills and Probate surgery at a number of federations. The surgeries are normally held at the police federation member services offices. To book an appointment, please contact your federation member services, or Emma Fidler on 0161 930 5197.

As an incentive, we offer a 10% discount on Wills and Lasting Powers of Attorney to federation members and their partners.

Gorvins Private Client team can advise you fully on all aspects of Lasting Powers of Attorney, wills, tax and estate planning, including how to take full advantage of the inheritance tax exemptions available to you. We can also help with Court of Protection work, elderly client issues and probate. We have a team of seven experienced specialists in this area of the law. Two are full STEP members, with three student STEP members.

For advice on powers of attorney or any other matters contact **Gorvins Solicitors** at:

4 Davy Avenue
Knowlhill, Milton Keynes
MK5 8NL

Tel: +44 (0)1908 354 154
Fax: +44 (0)1908 354 155
E-mail: enquiriesmk@gorvins.com
www.gorvins.com

2-14 Millgate
Stockport, Cheshire
SK1 2NN

Tel: +44 (0)161 930 5151
Fax: +44 (0)161 930 5252
E-mail: enquiries@gorvins.com
www.gorvins.com