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— S O L I C I T O R S —

Lasting Power of Attorney



Everybody Matters

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GUIDE TO CLIENTS ON LASTING POWERS OF ATTORNEY

(Property and Financial Affairs)

Old age, illness or accidents happen and sometimes they happen when least expected. The problem of caring for the physical and emotional needs of the infirm and the elderly weighs heavily on the community and on the individual carers.

If you cannot manage your finances after such an event practical decisions have to be taken as to where you live and who cares for you and if it needs to be paid for, then arrangements have to be made to do this. Often the person who needs the help cannot make the decisions himself and action has to be taken by the nearest and dearest.

Looking after the financial affairs of elderly relatives or those with disabilities is a problem that needs a legal solution.

This is how a Lasting Power of Attorney can help you

Lasting Power of Attorney (LPA's) came into force on 1st October 2007. There are two types of LPA's. The Personal and Welfare LPA allows a person to hand over the decision making powers in regard to their healthcare and welfare to a responsible person of their choosing. But this guide is really about the Property and Affairs LPA which allows you to pass control over your property and financial affairs to a responsible trustworthy person of your choosing. The Property and Affairs LPA covers the same ground previously dealt with by Enduring Powers of Attorney (EPA's). EPAs made prior to October 2007 remain valid and can be registered but NO FURTHER EPAs can be made after this date.

Making an LPA allows you decide who is appointed as the person who makes decisions on your behalf when you cannot do this for yourself. This person is known as your Attorney. He or she is usually your spouse, a child or children or a close relative. Your Solicitor may also be appointed as a professional Attorney if desired where there may be conflicts within the family or where the children live abroad. You cannot appoint an Attorney who is under the age of 18 years and cannot appoint a bankrupt. An Attorney has significant powers and it is very important that you appoint someone that you can trust.

And what does your Attorney do for you? If someone else tries to call your bank, your pension provider, your insurance company, the council, they usually hit a brick wall and they are literally unable to deal with matters due to "data protection" or "confidentiality". If however you have an Attorney, he can talk to these companies and institutions and act on your behalf.

The Attorney can assist in fairly mundane situations like making sure that you are receiving the right level of pension and benefits, checking that your bank accounts are in order, or they can take charge of more important matters like managing your savings and investments, paying your bills and completing your tax returns. Your Attorney can also have the power to sell your home and buy you somewhere more appropriate to your changing needs or where required pay for your care home fees.

The LPA does not allow your Attorney to make a Will on your behalf or to make large and generous gifts to anyone from your estate. The Attorney is not allowed to dispose of your money in such a way that you are deprived of it especially if the purpose is to avoid paying care home fees. At all time the Attorney has to act in your best and sole interests.

You can have one or more Attorneys, and specify if they have to act jointly (in which case they must agree and sign all the documentation) or you can appoint them to act independently of each other. In some cases you can have different people controlling a particular aspect of your affairs. You can if you wish, state limits and impose restrictions on what your Attorney can do. In this way you have a higher level of control that allows you to plan your future extremely accurately and to your satisfaction.

What happens if you do not make an LPA?

This would become a critical oversight if you did become incapacitated (physically and/or mentally) and if decisions to deal with your estate had to be made. If you have money invested in a sole account or if you own a property, then there can be no dealing without a Court of Protection Deputyship Order.

This is a long and relatively arduous process and is much more expensive and cumbersome. All costs are paid from your estate. The Deputy will manage your affairs in much the same way as your Attorney but under the supervision of the Court. The Deputy has to file annual and expenditure returns and pay annual fees to the Court. If any decision has to be made that is not within the scope of the initial Court Order further applications have to be made.

We therefore recommended that our clients who have investments and property make an LPA to avoid such drastic action having to be taken.

How do you make an LPA?

It involves the following steps:

1) You must designate an Attorney or Attorneys who have to be scrupulously honest and trustworthy. You can appoint replacement Attorneys to act in the event of one Attorney becoming bankrupt or dying.

2) You need someone to provide a certificate confirming that you have made this LPA freely and are not under any duress or being coerced to make the LPA. It is not possible for family members to be Certificate Providers. If we as your Solicitors prepare the LPA for you, then we act as Certificate Providers.

3) The LPA must be registered with the Office of the Public Guardian in order to be a legal and binding document before it can be used. Part of the registration process requires that certain people whom you will nominate in the document need to be informed of this happening.

The registration process is designed to involve people other than the Attorneys in order to make the whole procedure as clear and open as possible. You do not need to register the LPA immediately.

Even after the LPA has been registered you can stay in complete control of your affairs. You do not have to give up control to your Attorney until you feel the time is right. The LPA can be kept in safe custody with us and we will only release this to you. If, in the meanwhile, you should become ill or incapacitated then we would release it to your Attorneys after they have provided us with a doctor's letter confirming you are no longer able to manage your affairs.

Think of the LPA as an insurance policy, giving you and your family peace of mind but hopefully never needed.

If you would like further information regarding making an LPA, please feel free to telephone our offices and we can make an appointment for you to see a Solicitor to discuss matters further. Please note that we are happy to come to your home or do hospital visits if required.