

Appointing an Attorney(s)

It is important to consider carefully who is to be appointed Attorney and given the power:

- Usually between one and four Attorneys may be appointed in the same LPA. If more than a sole Attorney is appointed, the Donor must state in the document whether the Attorneys are to act together (i.e. together in all matters) or together and independently, which means they may act separately or together, as they choose. It is a vital decision to make because, if Attorneys are appointed together and one dies, the LPA then expires. However, if they are appointed together and independently, the remaining Attorney(s) can continue to operate the power. Also, the appointment of a sole Attorney may offer less security for assets than more than one Attorney acting together.
- Specific authority can restrict the powers, so that the Attorney(s) act only when the Donor becomes mentally incapacitated.
- If the Donor wishes, the Attorney(s) can be permitted to act on his or her behalf while the Donor is mentally capable.

The Office of the Public Guardian

The Office of the Public Guardian (OPG) is the body that supports and promotes decision making for those who lack capacity to manage their own affairs, or who would like to plan for their future. It operates within the framework of the Mental Capacity Act 2005.

The OPG registers every Lasting Power of Attorney and considers any complaints about registration. Where abuses are found to exist, these are referred to the Court of Protection (within the OPG), which will decide what action is taken.

Making an LPA

- An LPA must follow the form prescribed by the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.
- A solicitor can prepare an LPA and also offer advice, for a fee, to ensure that the document is legally binding.
- A signed, witnessed and certified LPA cannot be changed. If changes become necessary, the Donor will need to consider making a new LPA. It can, however, be revoked at any time providing the Donor still has mental capacity.
- Remember, an LPA is a valuable document and must be kept safe. It is best deposited with a solicitor, who may be instructed to release the document to the Attorney(s) if it needs to be registered at any stage (see 'Registering an LPA' above right).

What authority does an LPA give?

Before signing an LPA, it is important that the Donor recognises what authority he or she is giving to the appointed Attorney(s):

- The Attorney(s) will be able to assume complete authority over the Donor's affairs, unless restrictions have been made.
- In general, the Attorney(s) is empowered to manage the Donor's property and financial affairs, plus personal welfare (depending on which LPA is set up) as he or she might have done – although any potential abuses can be referred to the OPG.
- The authority of the Attorney(s) continues if the Donor becomes mentally incapable of handling both his or her financial affairs and well being, as in the case of accident or illness, assuming both parts of the LPA have been set up.
- Once the Donor becomes mentally incapable, the LPA cannot be revoked without the involvement of the OPG.

The application forms (available from the OPG) incorporate a certificate, which must be completed and signed by a suitably qualified independent party. That certificate provider must be able to confirm that, after discussion, the Donor understands the meaning of the Power of Attorney and is not under any pressure to make it.

Registering an LPA

- The LPA is made when the relevant form(s) has been completed and signed by all those required as signatories.
- An LPA can only be used after it has been registered with the OPG. An unregistered LPA gives the Attorney(s) no legal powers (unlike the previous EPA).
- The Donor can register the LPA as soon as it has been made or while he or she has capacity, or the Attorney(s) can apply to register it at any time.
- The benefit of registering the LPA immediately it has been made is that the Attorney(s) can then use it whenever necessary, with no delay.
- If registration of the LPA takes place a long time before its powers are needed, it may be necessary for the Donor to review the registered document from time to time, to ensure its contents are still relevant to current circumstances. Up-to-date information on LPAs is available from the OPG or its website.
- There are more formalities and increased costs incurred in making a LPA, as compared to the previous EPA.
- The basic fee to register an LPA with the OPG is £120. Please note that separate fees are payable for each of the Property and Affairs LPA and the Personal Welfare LPA. In some circumstances, exemption, postponement or remission of fees may apply, on application to the OPG.
- It is important that all the required parts of the form are completed, with signatures in the right place. Otherwise, the OPG may have to charge an additional fee.

Once the LPA is registered

- It usually takes at least six weeks to register an LPA, depending on whether there are any problems or objections.

When does the LPA end?

The LPA is valid until:

- The death of either the Donor or a sole Attorney
- The mental incapacity or bankruptcy of a sole Attorney
- The Donor cancels the LPA before registration, or it is revoked by the Court of Protection
- A disclaimer from an Attorney
- There has been a dissolution or annulment of a marriage or civil partnership between the Donor and the Attorney (unless the LPA specifically provided that such an effect should not affect the LPA).

Useful website

www.publicguardian.gov.uk

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