



michelmores

LASTING POWERS OF ATTORNEY

It is important to appoint someone to manage your affairs if ever you lack the mental capacity to do this yourself – for example due to illness or an accident. If you do not have a suitable arrangement in place and you lose the capacity to manage your affairs yourself, an application would need to be made to court to appoint someone to manage your affairs for you. Not only is this a relatively expensive and lengthy process, but you also would have no control over who is appointed.

These uncertainties can be avoided by creating a Lasting Power of Attorney (“LPA”). This document allows you to choose one or more relations, friends or colleagues as your “attorneys” to make decisions on your behalf. Two types of LPA exist. One relates to your “Property and Financial Affairs” and the other relates to your “Health and Welfare”.

Property and Financial Affairs LPA

A Property and Financial Affairs LPA governs decisions about your finances and the management of your property. An Attorney appointed under a Property and Financial Affairs LPA can act for you in the sale or purchase of property, arranging insurance cover, operating a bank or building society account, exercising voting rights attaching to shares, dealing with your tax affairs, paying your mortgage, rent and household expenses, making investments on your behalf, paying for residential care and nursing home fees as well as any private medical care.

Health and Welfare LPA

A Health and Welfare LPA allows your Attorneys to make decisions about your personal welfare including your healthcare. An Attorney appointed under a Health and Welfare LPA can decide where you should live, who you can live with and who can visit you. Your Attorney will be able to arrange your day to day care and take healthcare decisions concerning (for example) medical examinations, dental and optical treatment, make assessments for and provision of community care services, decide whether you should take part in certain social activities, education and training and deal with your personal correspondence and papers. A Health and Welfare attorney may also be able to take the decision to withhold life sustaining treatment if authorised to do so.

Who should I appoint as my Attorney(s)?

Your Attorney should be an adult of sound mind who you know well and trust. They must always act in your best interests and in accordance with the principles laid down by the Mental Capacity Act 2005 and the Code of Practice supporting it. You can choose more than one Attorney and your Attorneys can be members of your family if you wish. You can appoint a replacement Attorney(s) to step into the shoes of your Attorneys should they be unable or unwilling to act for any reason.



michelmores

LASTING POWERS OF ATTORNEY

Does my LPA come into effect immediately?

A Health and Welfare LPA cannot come into effect until you are mentally incapable of making your own decisions about your health and welfare. This limitation does not apply to a Property and Affairs LPA. However, neither type of LPA can be used until it has been registered with the Office of the Public Guardian. You can cancel the LPA even after it has been registered with the Office of the Public Guardian, provided you still have mental capacity to do so.

Can I place restrictions in my LPA?

Yes, it is possible to limit the scope of the powers given to your Attorneys. However, if you appoint an Attorney who you know and trust then restrictions should not really be necessary.

Restrictions can make operation of the LPA more difficult. For instance, you could restrict your Property and Financial Affairs LPA to only become effective after loss of capacity but generally donors choose not to include such a restriction as it can make it much more difficult for your Attorneys to act on your behalf in practice.

Can I provide guidance to my Attorneys?

Yes, this can be included in the LPA itself. A preferable approach is often to prepare a personal statement to accompany your LPA outlining how you would like your Attorneys to conduct themselves, the considerations they should bear in mind and the people they should consult for further guidance, if necessary. Provided you have sufficient mental capacity, you can update this statement at any time.

How do I make an LPA?

You must be of sound mind and over the age of 18 to make an LPA. You can make a Property and Financial Affairs LPA, a Health and Welfare LPA or both. We will arrange an appointment with you to discuss who you wish to appoint as your Attorneys, any restrictions you may wish to place on your LPA and the formalities for registration of the LPA.

For more information, please contact your usual Michelmores contact or a member of the Tax, Trusts & Succession team.