

Cygnets Law

Lasting Power of Attorney Information



What is a lasting power of attorney?

A lasting power of attorney (LPA) is a legal document that lets you (the 'donor') appoint one or more people (known as 'attorneys') to help you make decisions or to make decisions on your behalf.

This gives you more control over what happens to you if you have an accident or an illness and can't make your own decisions (you 'lack mental capacity').

In relation to lasting powers of attorney in respect of property and financial affairs your attorney may also assist you with your affairs even when you are able to do so yourself if it would be more convenient for them to do things for you.

The different types of lasting power of attorney

There are two types of lasting power of attorney; one allowing the appointment of attorney(s) to deal with decisions regarding your property and financial affairs, and the other allowing the appointment of attorney(s) to deal with decisions regarding your health and welfare. You can choose to make both types of power or just one. You can appoint the same or different people to act as your attorney(s) in each case.

What is the benefit of creating a lasting power of attorney?

In creating a lasting power of attorney, you are able to appoint your loved ones and those who you trust to make important decisions on your behalf either with your consent or, in the event that you were no longer able to provide consent, on their own in your best interests. In choosing an attorney(s) to make decisions about your property and finances, they will be able to assist with things such as managing bank accounts, paying bills, collecting benefits or pension or deal with much larger transactions for you like the sale of property. You can choose to allow your attorney(s) to make decisions for you even when you are able to deal with matters yourself. For example, people often find it easier to give their attorney(s) the power to carry out tasks such as paying bills if they find it difficult to travel certain distances or difficult to talk on the telephone or they are out of the country for long periods of time.

A lasting power of attorney relating to health and welfare allows you to choose attorney(s) to make decisions about your health and welfare. Your attorneys can only make decisions when the lasting power of attorney has been registered with the Office of the Public Guardian and should a situation arise where you lack the capacity to make those decisions yourself. You can give your attorney(s) power to make decisions about medical treatment, different types of health care and decisions regarding care homes. These lasting powers of attorney also allow you to clearly express your wishes regarding consent to life sustaining treatment.

Who can the donor choose to be an attorney?

When appointing an attorney, you should consider how well that person looks after their own affairs, how well you know that person, whether you can trust them to deal with your affairs as you would wish and that they are happy to take on this role.

You may wish to appoint more than one person as an attorney to help prevent anyone taking advantage of their responsibility. Being an attorney is an important role and you must be sure that the person you choose knows them well enough to make decisions on their behalf, and that are in their best interests.

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Your attorney(s) could be anyone over the age of eighteen years and can be a relative, a friend, a professional (e.g. a solicitor) or a spouse, partner or civil partner.

You cannot choose someone who is under the age of eighteen years, someone who lacks mental capacity, or someone who has been declared bankrupt if making a lasting power of attorney for property and financial affairs. An attorney who is made bankrupt after the lasting power of attorney has been registered will not be able to act.

Choosing more than one attorney

The donor may appoint more than one attorney, and may specify whether the attorneys are appointed jointly, or jointly and severally. Joint attorneys must all act together. Joint and several attorneys can act independently of each other and if one of the attorneys can no longer act, this will not affect the validity of the appointment of the other attorneys.

You may also provide for a replacement attorney in certain circumstances, for example the death, loss of capacity or bankruptcy of the attorney.

The Certificate Provider

As an important safeguard against abuse, one of the requirements in making a lasting power of attorney is for the document to be countersigned by an independent person (the certificate provider) chosen by you to confirm that in their opinion:

1. you understand the purpose of the LPA and the scope of the authority being given to your attorney(s);
2. you are not under any undue pressure or duress to make the LPA; and
3. there is nothing else that would prevent a valid LPA from being created.

You may choose to appoint your own certificate provider being someone who has known you for over 2 years and is not named in the LPA.

Alternatively, a professional may act as certificate provider and a solicitor in our firm may do that for you at no additional cost if you would prefer.

If you require any further information or have any queries, please do not hesitate to contact a member of our Team.

Contact Details:

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