

Lasting Powers of Attorney – what are they?



A Lasting Power of Attorney is a document whereby you appoint a person or people to act upon your behalf in the event that you are unable to manage your financial property and affairs. You can also make a Lasting Power of Attorney which covers health and personal welfare decisions. In this document we will be looking purely at Lasting Powers of Attorney for Financial Property and Affairs.

The term 'Enduring Power of Attorney' may be more familiar to you. If properly drawn an Enduring Power of Attorney remains valid. However, the law changed under the Mental Capacity Act 2005. It is no longer possible to make an Enduring Power of Attorney but you can make a Lasting Power of Attorney.

The main changes are that a Lasting Power of Attorney must be registered with the Court of Protection to be used. It is more flexible in that you can name replacement attorneys to act if your first choice of attorney or attorneys is or are unable or unwilling to act.

Do I need a Lasting Power of Attorney for Financial property and affairs?

In the majority of cases the answer is a resounding YES.

The advantages are :-

- You have a choice of person or people to act for you should you become mentally or physically incapable of managing your financial affairs.
- The Court of Protection has minimal involvement saving time and court fees.
- Your attorney does not have to prepare annual accounts which would otherwise be necessary at the expense of your estate.
- You can relax and let someone else look after your affairs. Many people like to do this when they go to live in a residential or nursing home.
- Your attorney can act for you if you are overseas for any length of time.

- If the worst happens and you are not capable of acting in respect of your finances without a Lasting Power of Attorney a Deputyship Application would have to be made to the Court of Protection. Prior to the Mental Capacity Act 2005 deputyship was known as receivership. The court charge fees which are not cheap. The court will control what the appointed Deputy can or cannot do with your funds. It is time consuming and costly and can place a burden on your family at what would be a difficult time for them.
- If you are over 18 and have full capacity you can make a Lasting Power of Attorney appointing a person or people you trust to act for you. It is to be hoped that the Lasting Power of Attorney never has to be used. However, the document gives some peace of mind that if you were to become mentally incapable you have pre-empted the situation regarding your financial affairs. This makes it easier for your chosen attorney or attorneys to act in your best interests.
- A Lasting Power of Attorney can be revoked at any time whilst you retain capacity.

Some people choose to make their own Lasting Powers of Attorney without taking professional advice. The Public Guardianship Office website is very helpful. This can be found at www.publicguardian.gov.uk.

However, using a Solicitor and a member of Solicitors for the Elderly can truly add value. Many applications to register Lasting Powers of Attorney are rejected or terms of the document removed for being invalid. This is particularly the case where they have not been professionally drawn up.

A professional drafting of the Lasting Power of Attorney can truly add value. For example, you may wish to consider restrictions.

Restrictions and provisions that may be included are as follows:-

- Types of investment you may decline eg. non ethical.

- Options you would like to take on current investments.
- Permission for your attorneys to see your Will.
- Who to consult about financial planning if the need arises.
- How you would like money distributed as gifts to others on birthdays, anniversaries or other special occasions.
- You can guide your attorneys as to the use of annual Inheritance Tax exemptions.
- You can restrict the attorneys so that they must keep accounts and submit these accounts to a family member or professional.
- You may wish to restrict the document so that it can only be registered when you lack mental capacity.
- You can confirm that charitable donations are to continue.
- You may wish to limit the powers of your attorney in some way.

Do I need a Lasting Power of Attorney for Health & Welfare issues?

Maybe.

A health and welfare LPA, 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.

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 health and welfare LPA.

This LPA can cover such matters as choosing where you live as well as medical decisions. It can be particularly important if a person has certain dietary requirements or religious beliefs that dictate how they dress.

Why choose Wards Solicitors?

At Wards Solicitors we can advise you fully about Lasting Powers of Attorney.

We are also able to advise about Wills, Living Wills, Wealth Preservation, Estate Administration and Trusts. We have experienced and fully qualified Solicitors who are also members of the Society of Trust and Estate Practitioners and Solicitors for the Elderly.

Why not contact us for a free initial meeting? If mobility is an issue we will arrange to come and see you at your home.

In the first instance please contact me, Jenny Pierce, on 0117 929 2811 or by email at jenny.pierce@wards.uk.com.

For more information on Wills please follow the link [**wards.uk.com/wills-and-mental-capacity**](https://wards.uk.com/wills-and-mental-capacity).