

# **A SIMPLE GUIDE**

## **TO**

# **LASTING POWERS**

# **OF ATTORNEY**

**Backhouse Solicitors Ltd**  
**17 Duke Street, Chelmsford, Essex CM1 1JU**  
**01245 893400**  
**[info@backhouse-solicitors.co.uk](mailto:info@backhouse-solicitors.co.uk)**  
**[www.backhouse-solicitors.co.uk](http://www.backhouse-solicitors.co.uk)**



## WHAT IS A LASTING POWER OF ATTORNEY?

A Lasting Power of Attorney (LPA) is a formal legal document where you appoint up to four Attorneys to make decisions for you when you are unable to make them for yourself. There are strict rules to protect your best interests and unlike a General Power of Attorney, an LPA is not automatically revoked if you become mentally incapable. An LPA can be drawn up at any time whilst you have mental capacity but cannot be used by your Attorneys until it has been registered with the Office of the Public Guardian.

## THE TWO TYPES OF LPA

### **The Lasting Power of Attorney for Financial Decisions**

A Financial Decisions LPA allows your Attorneys to make decisions about how to spend your money and how your property and affairs are managed. You can give them this authority as soon as it has been registered, but if you still have the capacity then your Attorneys should only act on your instructions.

The authority given by the LPA is typically used so your Attorneys can:

- Manage your bank accounts and investments, including opening and closing accounts.
- Claim and receive benefits and other payments such as pensions and rebates on your behalf.
- Pay bills, household expenses, care fees etc. Buy, sell or rent any property that you own.
- Make gifts to others on your behalf - this is limited to people who are related to or connected with you for special occasions such as birthdays.

You can limit your Attorneys' powers by placing restrictions or conditions within the LPA itself, as well as providing them with guidance on your wishes. It is important to ensure that any restrictions are worded as clearly as possible.

You can also choose whether your Attorneys can make decisions individually, or whether they need to make joint decisions that they all agree on.

## **The Lasting Power of Attorney for Health and Care Decisions**

A Health and Care Decisions LPA allows your Attorneys to make decisions about your healthcare and welfare. Unlike a Financial Decisions LPA, the Health and Care Decisions LPA can only be used by your Attorneys when you are unable to make decisions for yourself.

Decisions about your personal welfare can be wide-ranging. They can include decisions about where you live, how you are cared for and what healthcare you receive. They can also include specific decisions about medical treatments or more general decisions. It is possible to give your Attorney specific guidance on when you wish medical treatment to be withdrawn, a decision which would otherwise be made by your doctors.

A Health and Care Decisions LPA is preferable to a Living Will (also known as an 'Advance Decision'), as it will cover a much wider range of circumstances.

### **PRACTICAL CONSIDERATIONS**

You must appoint at least one Attorney who must be over the age of eighteen and, in the case of the Financial Decisions LPA, they must not be bankrupt. It is also best to appoint replacement Attorneys to act if one or more of your Attorneys are unable to do so.

Each LPA needs to be signed by a Certificate Provider - your solicitor can act in this capacity for you. The Certificate Provider's job is to confirm that you understand the nature and consequences of making an LPA and that you are not under any external pressure to sign the document.

In addition to the Certificate Provider, you may also wish to select people whom you trust (but who will not be Attorneys) to be notified when an application is made to register your LPA. The Certificate Provider and the people you notify are important safeguards to protect you when you may be at your most vulnerable.

Finally, LPAs must be registered with the Office of the Public Guardian before they can be used. Either you or your chosen Attorneys can choose when to register the documents. It isn't necessary to do this immediately, but as an LPA cannot be used before it has been registered we suggest it is usually best to register it as soon as it is made so that there are no delays when your Attorneys need to use it.

It is important that the Attorneys are appointed correctly, otherwise the LPA will not operate as you wish (and in certain cases, the LPA may not be capable of being used at all).

## IS THERE AN ALTERNATIVE TO A LASTING POWER OF ATTORNEY?

If you become mentally incapable without having prepared an LPA, then a relative or another interested person will have to apply to the Court of Protection for a Deputy to be appointed. This is a complicated, lengthy and expensive process.

An application to the Court of Protection requires a doctor's certificate, a considerable amount of paperwork, form filling and a hearing to prepare an Order. The costs of this are usually significantly more than the cost of an LPA, for example, there is a Court fee of £365 to make the initial application and further Court fees of £365 on each subsequent application.

There are also supervision and administration costs to pay of up to £800 per year when a Deputy is appointed. Annual accounts also have to be prepared (and paid for, if you use a professional for this) and an annual insurance bond is required by the Court. The insurance bond is there in case your appointed Deputy should use your money improperly. These additional costs do not apply to a registered LPA.

The final sting in the tail with a Court appointed Deputy comes when you die. A further charge is levied to finalise your finances along with the annual charge until the Deputy's final account is issued. Professional service fees will also need to be paid and all of these costs will be taken out of your estate.

## HOW CAN BACKHOUSE SOLICITORS HELP?

Here at Backhouse Solicitors, we have a team of specialists who can explain the process of making a Lasting Power of Attorney in simple terms and help you prepare and register the documents. Then, should the unthinkable happen, you know that you've taken the best possible steps to protect you and your family from uncertainty, cost and unnecessary court procedures.

For more information, contact our expert team today to book your free initial consultation.

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