

# A Guide to Lasting Powers of Attorney



## SA Law can advise on, and prepare, the new Lasting Powers of Attorney

In October 2004 we saw the introduction of Lasting Powers of Attorney (LPA). These powers replaced what was previously known as an Enduring Power of Attorney (EPA). The EPA dealt specifically with your property and financial affairs.

The LPAs consist of two different types of power, one deals with your property and financial affairs and one deals with your health and welfare.

It is vital to ensure that you have sought the correct advice regarding Lasting Powers of Attorney, who you appoint as your Attorney is vital to ensure that your wishes are adhered to.

A bespoke and personal service is offered by our team of experts in this field. Please call us or contact us to discuss your requirements. Out of hours appointments and home visits can be made upon request.

## Meet the Team



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## What you need to know

### ***What is a Lasting Power of Attorney?***

A Lasting Power of Attorney (LPA) allows you (the Donor) to appoint someone you trust (the Attorney) to make decisions on your behalf.

### ***Why make a Lasting Power of Attorney?***

If you do not have a LPA or an Enduring Power of Attorney (EPA), and you lose the capacity to make decisions, the person who wishes to act for you must apply to the Court of Protection for authority to make those decisions.

- This is a more complicated and costly procedure than if you have an LPA or EPA.
- Medical evidence of your mental incapacity will be required.
- The application takes much longer than the registration of an LPA or EPA.

### ***Enduring Powers of Attorneys***

Enduring Powers of Attorney made before 1 October 2007 will still be valid, whether or not registered.

*Some points to note are:*

- EPAs relate only to your property and affairs. You may therefore wish to make a Personal Welfare LPA as well as any existing EPA.
- If an Attorney believes that the Donor of an EPA is becoming mentally incapable, they must register the EPA with the OPG.
- An Attorney can act under an unregistered EPA, as long as his authority is not restricted to the event of the Donor's mental incapacity.

## What are the two types of LPA?

### ***Property and Financial Affairs LPA***

This gives authority to your Attorney to make decisions regarding your finances and subject to any conditions or restrictions you place on it will allow your Attorneys to do anything regarding your finances which you could do yourself.

- This allows you to authorise your Attorney to make decisions on your behalf about your money, property and affairs.
- You can appoint one or more Attorneys.
- Your Attorney can act for you before and after you lack capacity, but the LPA must be registered with the Office of the Public Guardian (OPG) before your Attorney can act.

- There is a statutory period of six weeks that must pass after the OPG receive the application to register the LPA, before they will register it. This is to allow any objections to be made and considered.
- You can place restrictions and conditions on your Attorney and you can give guidance which they should take into account when they make decisions for you.
- Your Attorney must help you to make as many decisions by yourself as you can and must always act in your best interests.
- You can name up to five people on the LPA to be notified when an application to register is made. This provides a safeguard if you lack capacity when the LPA is registered.
- An independent person must certify that you are making the LPA of your own free will and that you understand its purpose and powers. This is another important safeguard.
- You can cancel your LPA while you still have mental capacity.
- The LPA must be made in a prescribed form.

### ***Health and Welfare LPA***

This type of power can only be used by your Attorneys if you are mentally incapable of making decisions regarding your health and welfare. Whilst you are still mentally capable you and only you can make decisions regarding your health and welfare. This type of power is similar to the Living Will or the Advance Directives and can enable your Attorneys to make any decisions regarding your health and welfare that you could make yourself such as choosing a residential or nursing home, agreeing to medical treatments, and subject to your consent can also allow them to make decisions regarding your life sustaining treatments.

This allows you to authorise your Attorney to make decisions for you about your welfare, e.g. accommodation and medical treatment. The same principles and rules apply as for the Property and Financial Affairs LPA with the following important differences:

- Your Attorney can only make decisions for you under a Health and Welfare LPA once you lack mental capacity to make those decisions yourself
- You must state whether you want your Attorney to have authority to make decisions about life sustaining treatment for you.

The Lasting Powers of Attorney cannot be used until they have been registered through the Courts. The registration fee is £110 per document, although in some cases it may be possible if you are on limited income or have limited capital to apply for an exemption or a remittance of the fees.