



Powers of Attorney

If you became ill or disabled, or went abroad and needed to entrust someone with the management of your affairs, what would you do?

It can provide great peace of mind to know that your affairs will be managed by someone you have chosen and a Power of Attorney (POA) allows you to make that decision.

A POA is a formal, written authority, granted by one person (the 'Donor') to another person (the 'Attorney') enabling the Attorney to act on the Donor's behalf.

In England & Wales, there are two kinds of POA, General and Lasting.

General Powers of Attorney

A General Power of Attorney (GPA) is a relatively straightforward authorisation, usually for specific periods or events. The need to create a GPA might arise, for example, if you are going abroad or are too busy to deal with a particular financial transaction.

A GPA will usually end either at a specified time or upon the request of the Donor at any time. It will automatically be revoked if the Donor loses mental capacity.

It gives the Attorney authority to take decisions and actions on behalf of the Donor, as if the Donor were taking them himself or herself, in relation to nearly all of the Donor's property and financial affairs, or specific ones. This could include buying or selling property or shares, signing cheques and collecting pensions. It does not enable the Attorney to exercise functions which the Donor has as a trustee or executor of someone's estate, unless this is specifically stated.

The main benefit of creating a GPA is that it does not have to be registered for the Attorney to act under it. This makes it quick and easy to complete.

Lasting Powers of Attorney

Lasting Powers of Attorney (LPAs) are rather more complicated to create and administer than GPAs for the simple reason that they remain valid in the event of the Donor becoming mentally incapable of handling his or her affairs, and so require particular procedures and formalities to be followed.

There are two types of LPAs:

1. **A property and affairs LPA**, which allows the Attorney authority to deal with specified property and finances of the Donor; and
2. **A personal welfare LPA**, which allows the Attorney to take welfare and health care decisions on behalf of the Donor, only when the Donor lacks mental capacity to do so. This could also extend to giving or refusing consent to the continuation of life sustaining treatment.

One of the main differences between GPAs and LPAs is that the Attorney under an LPA will only be able to act under it when all of the LPA procedures and formalities have been completed. It has to be signed by the Donor and the Attorney and certified by a person that the Donor understands the nature and scope of the LPA and there is no reason why the LPA cannot be created. It then has to be registered with the Office of the Public Guardian.

An Attorney under a GPA can act from the time it is created unless the GPA states otherwise.

The financial LPA can be used when the donor has capacity to act, as well as if the Donor lacks mental capacity to make a financial decision. The personal welfare LPA can only be used when the Donor lacks mental capacity to make a welfare or medical decision.

Continued overleaf



An LPA can be created but not registered with the Office of the Public Guardian until the Attorney needs to act. This may be suitable for people who need to stagger the cost of creating an LPA.

Choosing your Attorney

Whichever document you chose to create you should take care who you appoint. They should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or you can appoint them together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

Existing Enduring Powers of Attorney

Any Enduring Power of Attorney (EPA), validly made before 1st October 2007, will continue to be able to be used but only in respect of property and financial affairs. If you wish to give authority over your health or welfare you will need to make a personal welfare LPA.

What happens if you have not made a GPA, LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as one appointing another person to make decisions on your behalf. Even your spouse and children would be powerless to act on your behalf without a court order. This can be costly and time consuming.

Disclaimer: This leaflet contains general information and you should take specialist legal advice before taking or refraining from any action.