



## **BEING AN ATTORNEY UNDER A LASTING POWER OF ATTORNEY**

### **What is a Lasting Power of Attorney (LPA)?**

A LPA is a legal document that enables a person (the Donor) to choose another person or people (the Attorney(s)) that they trust to make decisions on their behalf about things such as their property and affairs or personal welfare at a time in the future when they no longer wish to make those decisions or when they lack the capacity to make those decisions themselves.

A LPA must be registered with the Office of the Public Guardian before it can be used.

### **The types of LPA**

There are two different types of LPA:

Health and Welfare LPA: Allows the Donor to appoint Attorneys to make decisions on their behalf regarding their personal healthcare and welfare. These decisions can only be taken when the LPA has been registered and the Donor lacks the capacity to make the decision for themselves; for example if they are unconscious or because of the onset of a condition such as dementia. An Attorney may be required to make decisions about:

- giving or refusing consent to particular types of health care, including medical treatment decisions;
- whether the Donor continues to live in their own home, perhaps with help and support from social services, or whether residential care would be more appropriate;
- 'life-sustaining treatment';
- the Donor's diet, dress or daily routine.

The Donor will decide which of these decisions the Attorney is able to make.

Property and Financial Affairs LPA: Allows the Donor to appoint Attorneys to make decisions on their behalf regarding their property and financial affairs. These decisions can be taken when the Donor still has capacity as well as when the Donor lacks capacity as long as the LPA has been registered. The LPA may restrict the use of the powers to a time in the future when lack of capacity has been established. The LPA will stipulate whether the Attorney has the power to make decisions about all the Donor's property and financial affairs or will specify which property and financial affairs the Attorney may make decisions about. The Attorney may be responsible for paying bills, collecting benefits or selling the Donor's assets.

### **Important Considerations for Attorneys**

- Restrictions and Conditions: The Attorney must adhere to any restrictions and conditions contained in the LPA and guidance within the LPA should be taken into consideration when making decisions in the Donor's best interests.

- Who Can be an Attorney?: An Attorney must be over 18. An Attorney under a Property and Financial Affairs LPA must not be bankrupt when he signs the form and if he becomes bankrupt in the future the LPA may be cancelled.
- Appointment: Where there is more than you one Attorney they may be appointed jointly (meaning all Attorneys must agree on a decision and all Attorneys will be required to sign documents), jointly and severally (meaning that any one Attorney can make decisions or sign documents) or jointly for some decisions, and jointly and severally for other decisions (meaning that joint decisions and all signatures are required in certain circumstances). It is important to discuss any decisions with the other Attorneys even if there is the ability to act independently in order to avoid conflicts.
- Duties and Responsibilities: The Mental Capacity Act 2005 imposes specific duties on an Attorney. These include acting in accordance with the Act's principles such as acting in the Donor's best interests, having regard to the guidance in the Code of Practice and acting only within the scope of authority as an Attorney. Chapter 7 of the Code of Practice contains other duties and obligations. As an Attorney is under a legal duty to have regard to the contents of the Code of Practice it is advisable to read it carefully before deciding whether to take on the role of Attorney. In certain circumstances Attorneys may be required to produce information to the Court of Protection, including accounts. Further information and the Code of Practice can be obtained from [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk). The Code of Practice can also be purchased from The Stationary Office (Tel. 0870 600 5522)

### **Registration of a LPA**

A LPA must be registered before it can be used, however, registration can take place any time after the LPA is made. The Donor may register the LPA themselves providing they have the capacity to make this decision. If an Attorney believes that the Donor is unable to make such a decision then the Attorney can make the application. Before applying to register it is necessary to ensure whether the Donor has stipulated within the LPA that certain people should be told that an application for registration is to be made. Any person notified will then have an opportunity to object to the registration.

### **Evidence of your Identity**

We may need to obtain formal evidence of your identity. It will help us if you can bring this evidence to the first meeting. We would normally ask for a passport or photocard driving licence plus one document confirming your address, such as a recent utility bill, council tax statement or bank statement (dated within the last three months).

If you need assistance please contact our Private Client Department

**Helston (01326) 555800**

**Hayle (01736) 754075**

We can also assist with Wills, Probate, Trusts and Estate Planning