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Lasting Power of Attorney (LPA)

A short introductory guide to Lasting Power of Attorney (LPA)

Collaborating closely with Colemans Solicitors, we proudly present the Lasting Power of Attorney (LPA) Guide.

If you are considering the important step of creating a Lasting Power of Attorney, Colemans Solicitors invites you to a **complimentary initial consultation** where you can speak with a legal expert who will provide personalised guidance. To speak with a legal expert today, contact them on [01444 459 555](tel:01444459555) or explore further details on their website www.parfittcresswell.com. Your peace of mind and your loved ones' security begin with a simple conversation.



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St Peter & St James Hospice, North Common Road, North Chailey, Lewes, BN8 4ED. Registered Charity Number: 1056114

Making a Lasting Power of Attorney (LPA)

What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (or LPA) is a legal document which enables you to appoint at least one person whom you trust to either undertake tasks in relation to your finances for you and on your direction, to help you make your own decisions, or to make decisions on your behalf. These appointed people are known as your Attorneys (not to be confused with the American English word for lawyer).

You can only create an LPA if you have the mental capacity to do so at the time and have not been put under any undue pressure to set it up.

An LPA is not necessarily permanent, you can cancel it at any time whilst you have mental capacity but once it has been created and registered it is able to continue for your lifetime even if you lack mental capacity in the future (this is the difference between a 'Lasting' Power of Attorney and a 'general' one).

Why should I consider creating a Lasting Power of Attorney?

Lasting Powers of Attorney can offer you peace of mind in the event you were to suffer from an illness or accident which meant you were unable to make your own decisions, whether permanently or temporarily. In this event your Attorney(s) could step in and assist you with your decision making for as long as required.

When it comes down to your property and finances, your Attorney(s) can also act for you at any time at your request, for example if you were unable to visit the bank or arrange to pay your bills, you could also ask your Attorney(s) to help you with this.

As with any type of insurance though, it is important that it is in place before it is needed. Some people procrastinate with these or find it difficult to consider the future and can leave it too late (for instance when their capacity is impaired). The best time to prepare Lasting Powers of Attorney is as soon as you think about it and realise you want them or that your current ones need changing.

Does it mean I lose control of my own assets?

Many people worry that by creating a Lasting Power of Attorney they are effectively handing over control of their assets and care decisions to their Attorney(s) which understandably can cause concern.

However, as long as you retain mental capacity you also retain control over your own assets and welfare decisions.

In the event your Attorney(s) are required to act for you, they must help you to make your own decisions as much as you can and always act in your best interests.

Generally, if there is a concern that your attorneys will take over when you may not want them to, you have probably not thought about the right attorneys. The correct attorneys will always want to help you and be directed by you first.

Are there different types of Lasting Power of Attorney?

Yes, there are actually two types of LPA: one for making financial decisions and another for making health and welfare decisions. With each type, you may choose an unlimited number of attorneys to either act initially or as replacements if your first attorneys cannot act. There are a number of options around structuring this and it is usually as critical as selecting the right attorneys.

Property & Financial Affairs LPA

This LPA allows your Attorney(s) to make decisions surrounding your property (if any) and your finances. However, you are able to restrict this authority by including specific preferences or instructions when setting it up.

You decide when you want this type of LPA to start. This LPA can be used at any time whilst you have mental capacity but only with your consent, as well as in the event you were to lose mental capacity.

Your Attorney(s) must never mix your money with their money, and you are entitled to ask for regular updates on how much money you have and how it is being spent but the right attorneys will always keep you updated and involved.

Without a LPA for finances, it can be very difficult for people to help, especially when it is needed most. It is possible for the Court to order a Deputy to be appointed to take care of your affairs if there is no LPA but this is more expensive and takes longer than preparing a LPA during your lifetime – you also have no control over the person to be appointed as the Court will take the responsibility for making this decision for you.

Health & Welfare LPA

This LPA can only be used by your Attorney(s) when you no longer have the mental capacity to make your own decisions about your health and welfare. This could include making decisions ranging from what you may eat and the clothes you wear, to medical decisions such as giving or refusing consent to life sustaining treatment. Again, you are able to restrict how your Attorney(s) can act for you if there are matters you feel strongly about and many people will include guidance or restrictions over the type of care or medical treatment they want to receive as well as how their attorneys should become involved with any end of life decisions.

In the event you were to lose mental capacity and you did not have this type of LPA in place, decisions about your health and/or welfare would be made by professionals relevant to your situation.

Why is it important to create a Lasting Power of Attorney?

Creating an LPA allows you to appoint the people you trust to manage your affairs should you no longer be able to do so yourself. It is extremely important to ensure that you trust your Attorney(s) implicitly as you are appointing them to make decisions on your behalf, as if they were you.

Having an LPA in place can bring you comfort and peace of mind whilst also avoiding time-consuming, costly and emotionally draining situations later.

How do I create a Lasting Power of Attorney?

You can obtain the relevant forms and an information pack from the Office of the Public Guardian (OPG). The OPG is a government body which helps and protects people in England and Wales who may not be able to make decisions for themselves due to a lack of mental capacity. The OPG's website is here: Office of the Public Guardian - GOV.UK (www.gov.uk).

1. You must decide who you would like to appoint as your Attorney(s) (it is recommended to have more than one) and check that they are happy to do so;
2. Fill in the forms to appoint them as attorney;
3. Register your LPA with the Office of the Public Guardian (this can take up to 20 weeks).

While you do not have to use a solicitor to create an LPA, having the documents prepared and checked by a professional can prevent problems at a later date. This is particularly important if you are unsure of the process or if your affairs are complex. It is more costly than filling in the forms yourself, however it is likely that you will find the reassurance of receiving professional advice is worth it as there can be wider implications, such as the interaction between the appointed attorneys and gifts you may wish to make in your Will.

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