

Carter Lemon Camerons LLP

Solicitors



Private Client Department

Guide to Lasting Powers of Attorney

Introduction

Putting in place arrangements for what happens to your estate, who deals with your assets and who makes decisions about your welfare and health treatment in the event of you being mentally or physically unable to do so is a sensible step for the future security of your family. It also ensures that your wishes will be carried out in the way you want them to be.

Taking such steps will enable trusted friends or advisers to manage your financial affairs and make decisions about your health and welfare, if you are unable to do so yourself in the future.

This guide to making Lasting Powers of Attorney is designed to highlight some key points.

Everyone is different, so it is essential to seek legal advice tailored to your personal circumstances. If you would like to discuss these issues in more detail, please contact us.

Why make a Lasting Power of Attorney?

As mentioned above, it is sensible to put in place a Lasting Power of Attorney (LPA). This allows you to appoint someone to manage financial and other matters on your behalf when you are no longer able to do so for yourself.

Types of LPA

There are two types of LPA:

- an **LPA property and financial affairs** allows the person making the arrangement – the donor – to give a relative, friend or professional adviser, such as a solicitor, the legal authority to manage their financial and property matters, such as selling their house or managing their bank account, if they become mentally incapacitated. This person is known as an attorney.
- an **LPA health and welfare** allows the donor to give an attorney – not necessarily the same person as the one handling their financial affairs – the power to make decisions on matters including their health and welfare, for example whether to have medical treatment, or concerning their day-to-day care.

Your attorney or attorneys must always act in your best interest so it is vital that you appoint people in whom you have complete confidence.

Making an LPA avoids the need for complicated legal proceedings to obtain access to the assets of someone who has become incapable of handling their own affairs in old age – or at any age – but has made no provision in case that happens.

By seeking your solicitor's advice on drawing up your will and LPA, you will have real peace of mind that your affairs in the future will be handled in accordance with your wishes. Your solicitor may also be able to act as your attorney, if you wish.

What else do I need to know about LPA's?

To make an LPA, the donor must have the mental capacity to make their own decisions and be aged over 18. You can make an LPA at anytime.

The attorney is appointed to make decisions as if they were the donor themselves and must act in the donor's best interests. The duties of attorneys are also set out in the Mental Capacity Act Code of Practice. Attorneys should be aware of this and follow the guidance provided by the code.

The LPA must be set out in the legally required format and contain a certificate completed by an independent person to confirm that the donor understands the LPA's importance and that they are not under any pressure to make it.

An LPA must be registered with the Office of the Public Guardian (OPG) before it can be used. An unregistered LPA will not give the attorney any legal powers to make decisions for the donor.

The LPA can be registered either before the donor loses mental capacity to make decisions or when their attorney or attorneys have reason to believe this has happened.

How do I revoke the LPA?

The donor can revoke (i.e. cancel) the LPA as long as they have the mental capacity to do so. If there is any dispute about whether the LPA has been revoked, the Court of Protection has the authority to make a decision.

If the attorney is a spouse or civil partner, the dissolution or annulment of a marriage or a civil partnership will end their appointment, unless the donor has specifically stated in their LPA that this is not to happen.

An LPA for property and financial affairs is revoked if the donor or attorney or attorneys are made bankrupt. Bankruptcy does not terminate an LPA for personal welfare.

Contact Carter Lemon Camerons for advice

For more details, please contact a member of our private client team.



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This guide was correct at time of publication and is not a substitute for legal advice.