

# POWERS OF ATTORNEY

While most people recognise the benefits of having a Will, few are aware of the need to consider what might happen if you are no longer able to manage your affairs. In order to avoid your family or friends having to make an application to the Court of Protection to appoint another person to manage your affairs, particularly if you become elderly, suffer from dementia or other disability, it is advisable to complete a Lasting Power of Attorney (LPA).

## What is a Lasting Power of Attorney?

There are two types of LPA:

1. A property and affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify;
2. A welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, only when you are unable to make the decisions yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

## Your Attorney

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them always to act together or together and independently. You may even appoint them to act together for some things and independently for others, although this should only be done with advice, as it may cause problems in the use of your power.

You may also choose to appoint a successor to your attorney, in case he dies or otherwise cannot act for you.

## When can the Attorney act?

The LPA has to be signed by you and your attorney and certified by an independent person (certificate provider) that you understand the nature and scope of the LPA and have not been unduly pressurised into making the power. The certificate provider will also need to confirm that there has not been any fraud or another reason why you cannot make the power. It must then be registered with the Office of Public Guardian (OPG) before it can be used. The financial LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

You are free to revoke an LPA at any time providing you still retain the mental capacity to do so.

If you already had an Enduring Power of Attorney (EPA) in place prior to 1 October 2007 then this will remain valid but only in respect of your property and finances. If you wish to give authority over your health or welfare, you will need to make a welfare LPA.

We strongly recommend that if you do not have an EPA you make an LPA while you can.

## What happens if you have not made an 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 appointing another person (a deputy) to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes within your family, you can give a person authority to make those decisions on your behalf by making a welfare LPA.

***If you need further clarification or advice regarding the above, please contact our Private Client Team on 01306 880110.***

***Full details of all our legal services can be found on our website: [www.downslaw.co.uk](http://www.downslaw.co.uk)***

**DOWNS**  
SOLICITORS & NOTARIES

156 High Street Dorking Surrey RH4 1QB  
T: 01306 880110 F: 01306 502283

The Tanners 75 Meadrow Godalming Surrey GU7 3HU  
T: 01483 861848 F: 01483 861856

W: [www.downslaw.co.uk](http://www.downslaw.co.uk)