

Power of Attorney

Power of Attorney is another subject that is perhaps best broached well in advance of it being needed. Its main purpose is to appoint someone to make decisions on your behalf. The crucial point is that it can only be drawn up while someone has the mental capacity to do so. By the time they lose mental capacity and need someone to act on their behalf it will be too late. If you are caring for someone who has some advance warning, such as a diagnosis of early stage Alzheimer's disease, it is particularly important to consider a Power of Attorney while there is still time to complete it.

As with wills, it is quite possible that there is already a Power of Attorney in existence, which may or may not be remembered. Many people draw these up in later life when they are using a solicitor for something else such as moving house or making or updating a will. If you have been named in a Power of Attorney then hopefully you will have been told at the time, although of course you may have forgotten too.

Previously the most common form of Power of Attorney was known as an Enduring Power of Attorney (EPA). These were replaced in October 2007 by the Lasting Power of Attorney (LPA). EPAs that were set up prior to this date still remain valid, however.

A Lasting Power of Attorney is a legal document that allows someone to choose other people who they want to make decisions on their behalf including when they lack mental capacity to make the decision themselves. It is 'completed' while the person still has capacity. It cannot be used before it has been registered with the Office of the Public Guardian, which will cost £130 for every LPA registered (as at April 2013).

There are two types of LPA covering health and welfare and property and financial affairs, respectively. You can choose to make just one type of LPA or both (in which two fees are payable).

HEALTH & WELFARE

This type of LPA allows you to choose one or more people to make decisions about things like:

- your daily routine (eg eating and what to wear)
- medical care
- moving into a care home
- refusing life-sustaining treatment

This Lasting Power of Attorney can **only** be used once someone is unable to make their own decisions.

PROPERTY & FINANCE

This lets you choose one or more people to make decisions about money and property for you, such as

- paying bills
- collecting benefits
- selling your home

Once registered this type of LPA can be used **immediately**. **If this is not what is wanted the person making the LPA must include a restriction that means that it cannot be used until they have lost capacity.**

As well as Lasting Powers of Attorney there is an option to take out an Ordinary Power of Attorney which appoints someone to act for a temporary period – holiday or hospital stay – or just to act in a more limited, supervised way. These do not need to be registered, but it does need to be clear what powers are being given – it may just be going to the bank or Post Office on someone’s behalf, for instance.

Since LPAs needs to be registered with the Office of the Public Guardian it is easy enough to check whether or not there is an LPA in existence, although remember they only began in October 2007. Details of how to do this are on <https://www.gov.uk/power-of-attorney>

This website also gives full details about how to take out a Lasting Power of Attorney, including the forms that need to be completed and full guidance notes on completing them. It is up to you whether you feel that this is sufficient for you to complete and register the forms, in close consultation with everyone affected, or whether you wish to involve a solicitor. There is no obligation to use a solicitor. If you are unsure of any aspect of the application process the Office of the Public Guardian helpline (details in the link above) is extremely helpful.

When the ‘donor’ (the person giving the LPA) and the Attorneys sign the LPA the signatures will of course need to be witnessed. In addition someone who has known the donor well for at least two years or who has relevant professional skills (not someone being appointed as Attorney) will also need to sign to confirm that the donor understands the significance of the lasting power of attorney and that no undue pressure or fraud is involved.

(Note that in Scotland Powers of Attorney are subject to different laws. See <http://www.publicguardian-scotland.gov.uk/> for more details.)