



# LASTING POWERS OF ATTORNEY

## What are powers of attorney?

Powers of attorney are legal documents where one person (the donor) gives another person or people (the attorney) the ability to make decisions on their behalf.

Individuals may only set up powers of attorney only when they have 'mental capacity' that is, the ability to weigh up information and make decisions for themselves.

Should mental capacity ever be lost if and should no power of attorney be in place, then the Court of Protection may appoint someone on your behalf. This is known as a Deputyship application, which can be a costly and inflexible process.

## Lasting powers of attorney (LPAs)

LPAs have been the most common form of power of attorney since their introduction on 1<sup>st</sup> October 2007. LPAs are an ongoing arrangement with no expiry date that allow others to make decisions on your behalf. Your attorneys cannot act until the LPA has been registered with the Office of the Public Guardian.

## Types of LPA

There are two types of lasting power of attorney one for **Property and Financial Affairs** and the second for **Health and Welfare**. The documents are distinct and must be entered into separately. Any donor may choose to appoint the same or different people on either document. You may also choose to enter into either type of LPA or both.

- **Property and Financial Affairs LPAs** give your attorney(s) the power to make decisions and to deal with your financial affairs, for example to pay your bills, sell your property or investments and operate your bank accounts. Unless you specify otherwise in your LPA, you may instruct your attorney(s) to use your LPA while you still have capacity to make financial decisions yourself. This does not

mean that they automatically make all financial decisions for you, it simply means that they can make these decisions if you allow them to at the time. This can be helpful if you are unwell or experience mobility problems.

- **Health and Welfare** LPAs give your attorney(s) the ability to make decisions about matters such as your medical treatment, your diet, where you live and how you spend your day. **Your attorney(s) can only use their powers once it has been determined that you have lost the mental capacity.** Your attorney(s) cannot make decisions about life-sustaining treatment (eg ventilation to help with breathing, feeding through a tube and resuscitation) unless you specifically allow this in the LPA.

## Choosing your attorney/s

Your attorney/s will potentially have a lot of power over your affairs, so you should ensure you choose a person/s whom you trust absolutely. You must be sure that they will always make decisions that are in your best interests.

Your attorney/s can be a member of your family or a professional. Whoever you choose, they must be over the age of 18 years and they cannot be a professional care worker except in exceptional circumstances.

You can appoint as many or as few attorneys as you wish. Should you choose to appoint more than one attorney you may decide to appoint your attorneys in one of two ways:

**Jointly**, which would necessitate that all attorneys would need to agree together to any decision being made, although this may prove inconvenient, particularly for routine decisions. In addition, your LPA would be terminated if one of the attorneys can no longer act unless you have appointed a replacement for joint attorneys, or

**Jointly and severally** which allow your attorneys to make decisions and act either together or independently. This gives more flexibility than appointing attorneys to act jointly and means that the remaining attorney(s) can continue to act even if one or more of them is not able to/does not wish to act.

You may also choose to appoint replacement attorneys to act should your primary attorneys no longer be able to undertake their duties for whatever reason.

There are duties imposed upon how your attorney must act. They must;

- Assume you have mental capacity. Except with your permission in respect of the Financial LPA, they can only make decisions on your behalf if it can be shown that you don't have capacity.

- Help you make a decision. They should give you as much practical help as possible to make a decision yourself before anyone decides that you are unable to. You do not lack mental capacity because you make an 'unwise decision'.
- Make the least restrictive decision. Your attorney should consider all options and wherever possible choose the one that restricts your rights the least.
- The most important duty for any attorney is that they are only ever allowed to act in your best interests.

## **How Berensens May Help**

We encourage all our clients to consider having LPAs. We are here to guide and support you through the process of creating, entering into and registering your LPAs.

We will answer any questions you may have clearly, so as to ensure that you have peace of mind knowing that you and your family are prepared for the future, no matter how unpredictable that future may be.

We can also act as the required 'Certificate Provider' to confirm that you understand the purpose of the LPA and which is required in every case.

Should you wish to discuss LPAs or arrange an appointment to get your LPAs in place please contact us by post at;

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