



Freeth  
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LLP

## MANAGING YOUR AFFAIRS

### Lasting Power of Attorney

There may come a time when, because you are unable to manage your property and financial affairs or personal welfare, you will need someone to do this for you. You can formally appoint a friend, relative or professional to hold a Lasting Power of Attorney that will allow them to act on your behalf.

A Lasting Power of Attorney (LPA) is a legal document that lets you (the Donor) appoint someone you trust as an 'attorney' to make decisions on your behalf about things such as your property and affairs or personal welfare at a time in the future when you no longer wish to make those decisions or you may lack the mental capacity to make those decisions yourself.

Anyone aged 18 or over, with the capacity to do so, can make an LPA appointing one or more attorneys to make decisions on their behalf. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

An LPA can be drawn up at any time whilst you have capacity, but has no legal standing until it is registered with the Office of the Public Guardian.

You can create two types of LPA :  
Property and Affairs LPA  
Personal Welfare LPA

A Property and Affairs LPA allows you to choose someone to make decisions about how to spend your money and the way your property and affairs are managed and can be used at any time, whether you have the mental ability to act for yourself or not.

A Personal Welfare LPA allows you to choose someone to make decisions about your healthcare and welfare. This includes decisions to refuse or consent to treatment on your behalf and deciding where you live. These decisions can only be taken on your behalf when the LPA is registered and you lack the capacity to make the decisions yourself.

#### ***How many people should you appoint and who should they be?***

You may not be able to check up on the attorney yourself if you become incapable, so it may be a good idea to appoint more than one person to help prevent abuse of the responsibility. Choose people you can trust to act in your best interests. You should consider how well they look after their own financial affairs and whether you can trust them to use your money to meet your needs.

#### ***Seeking professional advice***

Depending on the complexity of your property and financial affairs it may be a good idea to get advice from a solicitor before making an LPA.

You can get further advice from the Office of the Public Guardian about making an LPA.

### **Registering an LPA**

Either you or your attorney can apply to the Public Guardian to register your LPA. The application can be made at any time after you have made an LPA.

Before the application to register the LPA is made, the people named as being entitled to receive notification of the application must be told by the person who wants to register it.

The Public Guardian will give notice that the application has been received to:

- you as the donor
- the attorney or attorneys

Your relatives will not be notified of the application to register the LPA unless you have named them as being persons who should be given notice.

Anyone who has been notified can object to the LPA being registered.

Once the LPA is registered it continues indefinitely. The LPA can be registered by the attorney after you have lost capacity.

### **Enduring Power of Attorney (EPA)**

Lasting Power of Attorney replaced the EPA on 1 October 2007. A person given power under an EPA before 1 October 2007 can still use it and apply to have it registered.

This person has a duty to apply to register the EPA as soon as they believe that you are becoming or have become mentally incapable of making financial decisions for yourself.

If you have an unregistered EPA and still have the capacity to make decisions for yourself, you can make a Personal Welfare LPA to run alongside it.

### **Canceling Powers of Attorney**

#### *Lasting Power of Attorney (LPA)*

You can cancel your LPA if you have the mental capacity to do so. If there is a dispute about whether your LPA has been cancelled, the Court of Protection has the authority to make a decision.

A Property and Affairs LPA is revoked if you or your attorney becomes bankrupt; bankruptcy does not terminate a Personal Welfare LPA.

#### *Enduring Power of Attorney (EPA)*

You can cancel an unregistered EPA if you have the mental capacity to do so, without applying to the Court of Protection.

To cancel a registered EPA you must show the Court of Protection:

- that you understand who the attorney is and what powers they have
- that you understand the effect of the cancellation
- why the EPA needs to be cancelled

An EPA is revoked if you or the appointed attorney become bankrupt.