

MAKING A POWER OF ATTORNEY

Lasting Powers of Attorney (LPAs) can be drawn up to appoint a person or persons to deal with your finances if you become incapable or unwilling to do so or to make decisions as to your personal health and welfare. Your attorneys are required to act in your best interests and abide by the provisions of the Mental Capacity Act 2005 and its Code of Practice and once the LPA is registered with the Office of the Public Guardian (OPG) they have the ability to make all the decisions that you could have made had you retained capacity. LPA's are therefore powerful documents and it is important that you are aware of the position before starting the process.

Role and responsibilities of attorneys

Property and Financial Affairs LPA - your attorneys, subject to any preferences and instructions that you have included in your LPA, have powers to deal with all aspects of your finances including realising and transferring assets and making investments on your behalf.

They should keep your assets and property separate from their own and those of other people and they should not take advantage of your position to gain any advantage for themselves. This means that they cannot simply use your money in any way they wish and should always operate accounts separately. Attorneys should keep accounts of their dealings in relation to your estate. Attorneys can recover any out of pocket expenses reasonably incurred as a result of their role as attorney, for example travel costs, stationery and postage. However, unless there is a specific clause in the power confirming that the attorney can be paid, they will not receive any remuneration.

Health and Care LPA – your attorneys can make decisions about all matters relating to your personal welfare, including about where you live and the medical treatment that you receive. Attorneys should act in your best interests, considering your needs and wishes as far as possible.

Who should I choose as attorney?

You can choose to appoint your attorneys and your replacement attorneys. If more than one attorney has been appointed the power of attorney document should state whether their appointment is on a joint or a joint and several basis.

A **joint** appointment means that the attorneys must act together. So, if one of the named attorneys dies, retires or loses mental capacity the whole document fails.

A **joint and several** appointment means any one or more of the attorneys can act on behalf of the donor either separately or together. Each attorney may be liable for the decisions made by the other, so it is important that they get along. An attorney must be aged over eighteen and it will often be sensible to appoint people younger than you. It is essential that you have complete trust in your attorneys.

When choosing your attorneys, you need to consider all the circumstances. If there is conflict in the family, then those individuals might not be the best choice to act on your behalf. In addition, when

considering anyone for the position of attorney you should consider whether they are likely to have the time necessary to carry out their duties and, in relation to a Property and Financial Affairs LPA, whether the proposed attorney is sensible with money.

If your affairs are complicated this needs to be considered especially carefully and you may like to consider making it a condition that your attorney takes suitable professional advice to ensure that your position is protected.

Professional attorneys

Some people may have no-one who they consider suitable to appoint whether because of lack of family, family dissent or because all possible candidates are deemed unsuitable for some reason. In that case you could consider appointing a professional to act as your attorney under a Property and Financial Affairs LPA. The advantage of using a professional is they are independent parties and will have established procedures will be in place for dealing with your finances. Fees would be charged on a time spent basis for work carried out under the LPA and this would be discussed, and full details provided before you decided to go ahead.

Further Assistance

It is important that as attorney you are aware of the limits of your authority to benefit others both under the Power of Attorney and the Mental Capacity Act 2005 without the authority of the Court of Protection.

Please see the table below for examples of things you cannot do with or without the consent of the Court of Protection (this table is for illustration purposes and is not comprehensive).

| Action | Consent from the Court of Protection required |
|--|---|
| Provide for the financial needs of those people the donor might be expected to provide for | No |
| Make birthday, wedding and Christmas gifts (small gifts known as 'customary gifts') | No |
| Execute a will for the donor | Yes |
| Make gifts other than small, customary ones | Yes |
| Execute a Deed of Variation on behalf of the donor | Yes |
| Transfer a property to a family member | Yes |

Although attorneys cannot delegate their decision-making powers to anybody else unless expressly authorised in the document although they can choose to employ agents to deal with some or all of the administrative work arising from their appointment as attorney. Here at Gregg Latchams we have the expertise to assist attorneys as much or as little as they feel is needed. We can also recommend estate agents and specialist independent financial advisers.

How can GL Law help you?

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hello@gl.law

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

The content of this guide is intended for general information purposes only and shall not be deemed to be or constitute legal advice.

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