



Hamilton Davies LLP

LASTING POWERS OF ATTORNEY

A lasting power of attorney (LPA) is a document giving someone you trust the authority to act on your behalf and make decisions if you lack physical or mental capacity to do so yourself.

Attorney

The person acting on your behalf or who makes decisions on your behalf is called an attorney. You can appoint one or more attorneys. You can also appoint replacement attorneys who can act if your primary attorneys are unable to do so. Your attorneys must be trustworthy as you will be giving extensive powers under the LPAs. You should make sure that they have the necessary skills to manage your affairs. If you appoint more than one attorney, you need to make sure that they get along well with each other.

Types of LPAs

1. Property and Financial affairs
2. Health and Welfare

1. Property and Financial Affairs

This LPA can be used by your attorneys when you have mental capacity and when you lack mental capacity.

An attorney can act on your behalf and make decisions relating to your finances and property such as, operating your bank and building society accounts, paying bills, dealing with your tax affairs and DWP benefits, buying and selling property, dealing with investments etc. They should make sure that they keep their financial affairs separate to yours.

The attorneys appointed should keep records and accounts of any dealings or transactions on your behalf as the court can question them at any point in time.

Attorneys only have a limited power to make gifts without the approval of the Office of Public Guardian (OPG) i.e on birthdays, Christmas, or make donations that you would normally make yourself.

2. Health and Personal Welfare

This LPA can only be used by your attorneys if you have lost mental capacity. An attorney can make decisions about your medical treatment, in which care home you live, whether to consent to or refuse life sustaining treatment.

Validity and Registration of LPA

You can make an LPA only if you have the mental capacity do so. If there is any doubt, we will require a doctor's certificate. We will also need to satisfy ourselves that you have not been coerced or put under any pressure to create it.

Once the LPA is created, it must be registered with the OPG before the attorneys can use it. The registration process takes on average 2-3 months. The OPG registration fee is £82 for each LPA that you put in place. You may be eligible for a reduction of fees or may not pay any fees at all if you receive certain benefits.

The powers of your attorney end with your death or if you decide to revoke them. You can revoke your LPAs at any time if you have mental capacity to do so.

If you have an Enduring Power of Attorney (EPA), this type of power of attorney is still valid. However, your attorneys need to register it with the OPG if they think you are becoming or have become mentally incapable of managing your affairs. An EPA only covers financial affairs. Therefore, if you wish to give authority over your health or welfare you must make a Health and Welfare LPA.

Our fee to prepare one type of LPA will be £700 plus VAT and if both types then £950 plus VAT. If you are a couple who want to put both types of LPAs (LPAs x4) in place then our fee will be £1,200 plus VAT. The court fee for registration is £82 for each LPA.

What if you do not have an LPA or EPA in place?

If you do not have an LPA/EPA in place and you lack capacity to manage your own financial affairs, your next of kin will have to make an application to the Court of Protection to appoint a 'Deputy' to make decisions on your behalf. This is a lengthier process at a time when you may need authority to act urgently. In addition, the costs are greater. Each court application costs £371, solicitors' fees will be at least £850 plus VAT if not more and supervisory and other costs will apply until the Deputyship ends upon your death.

If you would like to discuss this further or have any other queries, then please contact:

Ruksana Kaskar
Probate Lawyer
Director
Hamilton Davies LLP
28 High Street
Stevenage
Herts
SG1 3HF
Tel: 01438 315898