

Probate, Trusts and Wills

A quick guide to Lasting Power of Attorney

You have probably heard the phrase but do you know what it is?

A Power of Attorney is a formal way to grant legal authority to make decisions on your behalf of someone else. The person granting the authority is known as the Donor whilst those appointed to act are called Attorneys.

There are two types of Power of Attorney: a General Power of Attorney (GPA) and a Lasting Power of Attorney (LPA). Both GPAs and LPAs are powerful documents and needed to be considered carefully as they are open to potential abuse.

1. The GPA is normally used for a limited period of time and allows the Attorney to make simple decisions on behalf of a Donor for example if the Donor was abroad for an extended period. The authority granted will cease immediately if the Donor is no longer mentally capable of supervising their Attorney.
2. An LPA, by contrast will continue until cancelled even if the person granting it loses mental capacity.

There are two forms of LPA, one for Property and Affairs, and one for Health and Welfare. You can have one or the other, or both.

LPAs have inbuilt safeguards; a person must certify that the Donor understands the LPA, and it must be registered at the Office of the Public Guardian before it can be used. In addition, at least one independent person must be informed of the registration of the LPA and given the opportunity to object. A Health and Welfare LPA can only be used by the



Attorney if the Donor has lost mental capacity.

The Donor of an LPA can give instructions and guidance to their Attorney, and limit their authority. It is possible to have more than one Attorney, and to set out whether they are to act in unison, independently, or a mixture of these, depending on the decision required.

Mental incapacity affects only a small percentage of the population but the consequences, however, can be devastating. If there is no Lasting Power of Attorney in place, it will be necessary to make an application to the Court of Protection for a Court appointed Deputy to manage the affairs of the person affected.

This application can take a considerable time leading to significant initial and ongoing costs as the Court will then supervise the Deputy and require regular reports so it is usually preferable to have a LPA set up.

At Mayo Wynne Baxter we have a specialist team who can advise both the Donor or the Attorney when a Power of Attorney needs to be used. Also, where a friend or relative has lost capacity, and there isn't a Power of Attorney already in place, our team can give expert advice on making an application to the Court of Protection to be appointed their Deputy.

For further advice or information please contact Peggy Hall, Head of Probate, Trust and Wills on phall@mayowynnebaxter.co.uk
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