

**Wills, Tax and Probate Team**

**Powers of Attorney Brochure**

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**Disclaimer:** The guidance in this pack does not represent a full statement of the relevant law, but only the broad principles. The suitability of the information provided will depend upon your personal and financial circumstances, and we accept no liability for any loss you may suffer if you act upon it without obtaining legal advice.

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## **Lasting Powers of Attorney – A Guide**

A Lasting Power of Attorney ("LPA") is a document which allows a person (the Donor) to give authority to someone else (the Attorney) to deal with certain matters on his behalf. The Donor can give his Attorney wide or restricted powers to deal with specific matters or all his affairs.

There are two types of LPA:

- A Property and Affairs LPA, which allows the Attorney to deal with your property and financial matters
- A Health and Welfare LPA, which allows the Attorney to make decisions about your personal welfare and health care on your behalf, but only if you lack capacity to do so yourself. This can even extend to the giving or refusing of consent to the continuation of life sustaining treatment.

The authority given by an LPA only takes effect when the document has been registered with the Office of the Public Guardian ("OPG"). A fee is payable to register each LPA. In the case of a Health and Welfare LPA, the donor must also lack capacity to make the relevant health or welfare decision. The LPA is not automatically revoked if the Donor becomes mentally incapable. An LPA can be cancelled by the Donor at any time provided he is still mentally capable.

### **Can anyone make an LPA?**

Yes, so long as they are over 18 and have the relevant mental capacity when signing the document. Where there is any possibility of doubt a doctor's opinion may be needed.

### **What if the person lacks mental capacity?**

There is an alternative procedure by application to the Court of Protection for the appointment of a Deputy. This can be time consuming and expensive, but the Deputy (unlike the Attorney) is monitored by the OPG, and is usually required to provide indemnity insurance in case of any loss to the person's assets due to fraud for example. Despite the additional time and cost, this can be a better option for some people, because of the extra safeguards over the LPA.

### **Who can I appoint as my Attorney?**

You may generally appoint anyone you choose for example your spouse, your children, other relatives or friends. You may want to appoint a professional (who would usually wish to make a charge for acting in that capacity). You must be certain that they are financially astute and will be capable of dealing with your affairs, particularly if they are complex.

If you have several Attorneys they can either act “jointly” (in which case all must act together) or “jointly and severally” (in which case one can act independently of the others).

You can allow for substitute Attorneys to act in certain circumstances.

### **What powers will my Attorney have?**

***Property and Affairs LPA:*** The Attorney will generally have a wide power to deal with all your property and affairs. He will be able to write cheques from your bank account and will even be able to sell your house (unless he co-owns the house with you).

Your Attorney has very limited powers to make gifts, and cannot change your Will, unless authorised by the Court of Protection.

***Health and Welfare LPA:*** The Attorney will generally have a wide power to deal with decisions about your day to day welfare (such as where you live, with whom, and what you wear) and medical treatment. This only applies where you lack capacity to make such decisions for yourself.

Your Attorney will only be able to make decisions about life sustaining treatment if you have specifically included that provision within the document.

You can restrict the Attorney’s powers, but any such restrictions must be referred to in the document.

### **What are the advantages of an LPA?**

The LPA procedure is much simpler, quicker and less expensive than an application for a Deputy to be appointed through the Court of Protection. Generally, important decisions and steps need not be delayed if you become mentally incapable.

An LPA can also be used even where you are still mentally capable (subject to any restrictions in the document) provided it has been registered with the OPG.

You will have peace of mind knowing that if you become mentally incapable then you have put in place provision for someone to deal with your affairs, which should be of benefit to you and your family. You can choose your Attorney, and can choose what powers you give to him.

### **Are there any risks?**

Yes. The main risk is that the Attorney may misuse the document. Unlike a Deputy appointed by the Court of Protection, there will not necessarily be anyone monitoring the Attorney, for example to ensure that he does not use your money for his own purposes.

### **How can such risks be avoided?**

We suggest you consider the following very carefully when deciding to make an LPA:

1. Appoint several Attorneys to act jointly, however, the LPA will no longer be effective if one of them dies or cannot act under it for any reason, unless you appoint a substitute.
2. Restrict the use of the document so that it can only be registered if you give written consent or the Attorney believes you are or are becoming mentally incapable.
3. Ensure that someone other than the Attorney is aware of the existence of the LPA so that they can keep an eye on the situation if you are unable to do so yourself.

### **When must the LPA be registered with the OPG?**

Even where the Donor has mental capacity, the LPA must be registered with the OPG before it can be used. A specific procedure must be followed, and a fee is payable to the OPG for each document registered. Certain people (chosen by you) can be notified that the LPA is being registered and they, and you, will have an opportunity to object. This might be relevant, for example, if someone believes that you were forced into signing the document, or did not understand the terms of it.

### **Can I arrange an LPA for someone else?**

Yes, but you must appreciate that as solicitors, we have a duty to protect the interests of our client. In the case of an LPA, our client is the Donor. Quite often, however, we will initially be contacted by a friend or member of the family. To ensure that we comply with our duties and obligations to our client, we will usually insist on seeing them (either at their home, or here in the office) to confirm their instructions direct. In doing so we are complying with guidelines set by the Law Society.

We are not able to provide blank forms or completed forms for third parties to take away for signing, particularly where an elderly person is involved.

### **Is there an alternative to an LPA?**

Yes. You can appoint an Attorney under a **General Power of Attorney ("GPA")**. This will only give your attorney authority to deal with your property and financial affairs while you have mental capacity. If you lose mental capacity then the GPA will be automatically revoked.

A GPA will take effect immediately, and the registration requirements of the LPA do not apply.

**Can I have a GPA in addition to an LPA?**

Yes. You may wish to appoint an Attorney under a GPA to deal with your property and financial affairs while you have mental capacity, and also appoint him under a separate LPA.

The LPA need not be registered until you lose mental capacity, because the GPA will be operational in the meantime.

If you lose mental capacity then the GPA will become invalid. At that stage (or preferably earlier, when your Attorney thinks you are starting to lose capacity) the LPA can be registered with the OPG so that it becomes effective. There may however be several weeks when your Attorney would have no power to deal with matters for you.

**Will my existing Enduring Power of Attorney ("EPA") continue to be valid?**

Yes, all EPAs signed before October 2007 will remain valid.

**Conclusion**

An LPA is a useful document to ensure that your affairs can be dealt with by an Attorney you have chosen if you become physically or mentally incapable. However, the Attorney, and the powers given to him should be considered with great care. We will, of course, be pleased to provide further advice as appropriate.

## Our Charges for Powers of Attorney

### General Power of Attorney

Single	£185 plus VAT
Mirror (i.e. for husband and wife)	£225 plus VAT

### Lasting Power of Attorney

Property & Financial Affairs <u>or</u> Health & Welfare Single, including registration	£300 plus VAT
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Discount:

Property & Financial Affairs <b>and</b> Health & Welfare Single, including registration	£450 plus VAT
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Property & Financial Affairs <u>or</u> Health & Welfare Mirror (i.e. for husband and Wife) including registration	£435 plus VAT
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Discount:

Property & Financial Affairs <b>and</b> Health & Welfare Mirror (i.e. for husband and Wife) Including registration	£585 plus VAT
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Certified copy – per document	£25 plus VAT
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Office of Public Guardian Court fee – per document	£110
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(minimum charges are shown)

As a general rule, we charge for the provision of legal advice in relation to Powers of Attorney according to the time spent dealing with the matter (including personal interviews, telephone calls and correspondence), at the charging rate of the relevant fee earner dealing with the matter.

During our initial meeting with you, we will be able to review your requirements, and tell you how much our charges will be. If you prefer you can send us your completed questionnaires prior to the meeting and ask us for an estimate in advance.

## **GENERAL and LASTING POWERS OF ATTORNEY ("LPA")**

The preparation of an LPA requires you to make a number of important choices. The document must be signed in accordance with a specific procedure, including the provision of a certificate by the Certificate Provider, who must ensure (amongst other things) that you understand the document.

**Our basic charge** is for:

- advice about the preparation of a single LPA (either Property and Affairs or Health and Welfare) for one individual, or mirror documents for husband and wife;
- completion of the relevant forms;
- acting as the Certificate Provider for you; and
- dealing with registration.

**Additional charges** will apply for advice about, and completion of, an additional LPA (e.g. for Health & Welfare decisions), but we will usually apply a discounted rate where both a Property & Affairs and Health & Welfare LPA are prepared at the same time. Additional charges may also apply, for example for meetings at your home or in hospital; obtaining medical reports; or providing certified copies of the document.

## **CLIENTS RECEIVING STATE PENSION OR DISABILITY BENEFITS**

**HOME VISITS** – In some circumstances, no additional charge will be made for visits to you at home, in hospital or in a nursing home. Otherwise, we will usually apply a specially discounted rate to cover travelling time.

## **HELP WITH LEGAL COSTS**

You may be eligible for financial assistance from the Legal Services Commission ("public funding") when making a Will. If you think you might be eligible for public funding, it is your responsibility in the first instance to tell us.

We do not carry out publicly funded work. However, from time to time, we do participate in "free will schemes" offered by third party organisations, usually for people aged over 55. Please ask us for further details.

## **OUR INVOICE**

The majority of the work involved in the preparation of a Power of Attorney is in taking the initial instructions and preparing the draft. Once we have sent out the draft, we are anxious that clients should proceed to finalise and sign their documents as soon as possible. If documents are not completed after two reminder letters have been sent we reserve the right to charge the full amount quoted, together with the cost of the reminder letters and any additional work.

## **Lasting Powers of Attorney Acting as the Certificate Provider**

As an important safeguard against abuse, one of the requirements to validly make a Lasting Power of Attorney ("LPA") is for the document to be signed by the Certificate Provider ("the CP").

You may want to ask someone to be the CP for your own LPA. You must consider very carefully who you should ask to take on that role, as you may be placing a very heavy burden upon them.

You may be asked to act as the CP for a friend, colleague or neighbour. You must consider very carefully the implications of taking on that role. You may find yourself involved in a dispute and have to go to Court to explain yourself.

### **What is the Certificate Provider's role?**

The CP is an independent person who can confirm that the person making the power ("the Donor"):

- Understands the purpose of the document and the scope of the authority given to the Attorney (which may involve assessing the Donor's mental capacity)
- No fraud or undue pressure is being used to force the Donor to make the power
- There is nothing else that would prevent the LPA being made

### **Who can act as the Certificate Provider?**

The CP must be chosen by the Donor, and can either be:

- A person with "relevant professional skills and expertise" including
  - A solicitor
  - A GP, or other registered health care professional
  - A registered social worker
  - Someone who can certify that they consider themselves to have the relevant skills and expertise
- A person who has known the Donor for the previous two years

There are certain people who cannot be the CP (even if they fall within one of the categories list above), including someone who is:

- Under 18, or
- A relative of the Donor or the Attorney

### **Will the Certificate Provider make a charge?**

A professional person acting as the CP is likely to make a charge for his services.

### **What will the Certificate Provider be required to do?**

In order to do his job properly, the CP (whether a professional or not), must:

- Review the choices you have made throughout the form. It is therefore helpful if the CP knows about LPAs and the relevance of those choices.
- Ask about your family, and possibly your finances, to make sure you understand the authority you have given to your Attorney, and also that no-one is putting you under pressure to sign the document

These are very personal matters and a professional CP will be able to discuss them with the Donor confidentially.

### **Can my neighbour act as the Certificate Provider?**

Yes. Provided he qualifies as an appropriate person, and none of the exclusions apply. However you must think very carefully whether it is fair to place such a burden on your neighbour. He may not wish to act as the CP, but may be too embarrassed to say so. If there is a dispute about the LPA he may have to attend Court to give evidence.

### **My neighbour has asked me to act as the Certificate Provider for his LPA – should I agree?**

Yes, provided you qualify as an appropriate person, and none of the exclusions apply. However you should only agree if you are confident that you can give the appropriate certificate. If you have any doubts at all, then you should refuse to act as the CP.

If there is a dispute about the document you may have to attend Court to explain your reasons for signing the certificate.

If the Donor is frail and/or elderly, you have not seen an LPA before, or you do not know the Donor's family or financial circumstances, you are unlikely to be able to sign the certificate with confidence. We would therefore recommend that you should refuse to act as the CP.

## **Do you need "A Helping Hand"?**

We provide a tailor made service at very competitive rates to help you manage your general and financial affairs.

### **Our "Helping Hand" Service**

Let us take the hassle away and deal with any or all of the following for you:

#### **Income Tax**

We know how confusing tax returns are to complete and how people worry about the Inland Revenue's deadlines

- We can complete your return and arrange payment
- Are you paying too much tax? We can complete the forms to claim it back

#### **Benefits**

Are you worried that you may not be receiving all that you are entitled to?

- We can review your benefits and if necessary complete the forms
- We can deal with the Benefits Agency on your behalf and deal with the annual reviews

#### **Payment of Bills**

We can arrange payment of your bills, so you needn't worry about missed payments. We ensure your house and contents insurance is always renewed each year, and you can forward all your non-personal post to us.

#### **Investments**

We can arrange for your finances to be reviewed on a regular basis and ensure they are working for you.

#### **Lasting Power of Attorney**

If you wish, you can appoint us to act as your attorneys, which means we will be able to continue to help you even if you become ill.

### **Your own "Helping Hand" Team contact**

You will be introduced to one of our specially trained team members who will be responsible for keeping in regular contact with you, either by phone or if you require, they can visit you at home.

### **Annual Report**

Your file will be reviewed regularly by the head of the Elderly Client Team, and where appropriate we will provide a written report to you each year, so you can check on the progress of your finances.

### **Legal Advice**

If you require legal advice this will be available from a qualified solicitor or legal executive to whom your "Helping Hand" contact will refer you, as appropriate.

### **Our charges**

A fixed annual fee will usually be agreed with you in advance, based upon the number and nature of your assets. Our charges for this service are set at a substantially reduced rate so that we can provide a competitively priced service to you.

## Wills and Estate Planning

### Why make a Will...

A professionally prepared Will ensures that:

- Your assets are dealt with after your death as you have chosen
- Important issues about your personal and financial affairs are addressed
- You have an opportunity to plan your finances tax efficiently

You therefore:

- Achieve **peace of mind** and
- Safeguard the financial future of your loved ones

### Our Team

Our dedicated Wills, Tax and Probate Team are specialists with a wealth of experience in legal matters relevant to Wills and Estate Planning.

### Our Will Service

Our service is tailored to meet a wide range of needs:

- **Standard Wills** – We can provide a basic service, at a fixed price, for the preparation of straightforward Wills. Discounts are available for elderly clients.
- **Specialist Wills** – We can also help clients with more complex circumstances requiring detailed advice and specialist will drafting, including:
  - Inheritance tax
  - Disabled trusts
  - Second families

### Our Estate Planning Service

Many people are concerned about the effect that **inheritance tax** and **long term care costs** will have on their assets.

We can **advise** you, and, by careful planning help you preserve your assets for the benefit of your loved ones

- Wills
- Lifetime gifts
- Trusts

- General advice
- Deeds of variation

### **Our charges**

These are clearly set out in our brochure, and you will be informed of our charges, in writing, before we proceed.

### **Please ask about:**

- Elderly Client Service
- Estate Administration Service
- Specialist Trust Service