

Power of Attorney

Introduction

Lasting power of attorney

Enduring power of attorney

Appointing a Deputy Where no Enduring Power or Lasting Power Exist

Office of the Public Guardian

Introduction

This factsheet should be used as a general guide only - if you require legal advice you should consult a solicitor.

A power of attorney can take many forms. All it means at a basic level is that you give someone else authority to deal with something for you, so a power of attorney can be limited both in terms of what someone can do and duration (for example a six month power of attorney to deal with your affairs whilst you are out of the country).

A very limited form of power of attorney can be granted by someone for cashing benefits. This is done by filling in the back of the book, which has a form for this purpose.

If the only thing that is required is dealing with a bank account this can be done using a third party mandate. Most banks have their own forms for doing this.

The granting of a power of attorney does not deprive the donor of the power to act personally on his / her own behalf. For example, s / he can sign cheques concurrently with the attorney(s).

A straightforward power of attorney, such as this, will automatically fail the moment that the donor (the person who made the power of attorney) becomes mentally incapacitated.

Lasting power of attorney

A lasting power of attorney or LPA in England and Wales is a document which allows you to appoint a person you trust to act as an attorney and make decisions on your behalf, if necessary.

You can draw up the lasting power of attorney at any time while you still have capacity but it will not be deemed as being legal until it has been registered with the [Office of the Public Guardian](#).

Once your lasting power of attorney has been registered it can be used at any time whether you still have the mental ability to act for yourself or not. There are two different types of lasting power of attorney documents you can draw up. The first is called a **Property and Affairs LPA** which allows your appointed person to make decisions about how your money is spent and the way your property and other affairs are managed. The second is a **Personal Welfare LPA** which allows your appointed person to make decisions about your healthcare and general welfare including refusal of medical treatment and deciding where you live. These decisions can only be made by your appointed person after your LPA has been registered and you lose the ability to make the decisions yourself.

If you choose to, you can appoint only one person to be your attorney; however, as you may not be able to check up on your attorney if you become incapable it might be a good idea to appoint more than one person to minimise the risk of the attorney abusing their responsibilities. It is advisable that you choose your appointed people by assessing how well they manage their own financial affairs as well as being someone you could trust to manage your own money and look after your needs.

Some main points to remember about the Lasting Power of Attorney or LPA are:

1) A Property and Affairs LPA allows the person making it to appoint an Attorney to manage their finances and property whilst they still have capacity to make decisions for themselves.

The Attorney will not be able to make decisions about the person's property and affairs unless they have been appointed as a Property and Affairs Attorney using a Property and Affairs LPA.

2) Alternatively, the person making the LPA may include a restriction that the LPA can only be used at a time in the future when they lack the capacity to make decisions for themselves for example, due to the onset of dementia in later life or as a result of a brain injury.

An Attorney will not be able to make decisions about a person's personal welfare unless they have also been appointed as a Personal Welfare Attorney using a separate LPA.

A Personal Welfare LPA can only be used when the person making it lacks the capacity to make these decisions for themselves.

Enduring power of attorney

Enduring power of attorney documents (EPA's) were replaced by Lasting power of attorney documents on 1st October 2007.

If an enduring power of attorney has already been made it can still be registered and used providing it is registered as soon as it is believed that the person has become mentally incapable of making decisions for themselves.

If you have made an enduring power of attorney which has not been registered yet and are still capable of making your own decisions, you could make a Personal Welfare LPA in addition to your enduring power of attorney.

Appointing a Deputy Where no Enduring Power or Lasting Power Exists

If there is no lasting power of attorney or enduring power of attorney in place, the person who wishes to sort out the affairs of the vulnerable person will need to apply for deputyship.

A deputy has the right to make decisions about the person's personal welfare, property and financial affairs. Anyone wishing to become a deputy will need to apply to the [Office of the Public Guardian](#).

Office of the Public Guardian

The Office of the Public Guardian produces a range of leaflets and forms. The leaflets include:

- Making a Lasting Power of Attorney (LPA)
- Registering a Lasting or Enduring Power of Attorney (EPA)
- Asking the Court to make a decision
- Customer service, fees, the OPG registers and Deputy guidance

Copies of these can be ordered from them on 0845 330 2900, found online at www.publicguardian.gov.uk or in person from:

Office of the Public Guardian
Archway Tower
2 Junction Road
London
N19 5SZ

They can help if you have any procedural questions; however they cannot advise on the best course of action to take in a given set of circumstances, this would require legal advice.

THIS FACT SHEET IS INTENDED AS A GENERAL STATEMENT OF THE LAW AND DOES NOT PURPORT TO RENDER SPECIFIC LEGAL

ADVICE. SPECIFIC ADVICE IN A PARTICULAR PROBLEM SHOULD ALWAYS BE SOUGHT.

Last updated EMW 14/1/2010