

# Living Longer and Lasting Powers of Attorney

## Introduction

Newspapers and television reports are constantly telling us that people in the UK are living longer than ever before. Whether our quality of life improves or merely its longevity is open to debate. Nevertheless, some facts cannot be ignored and one of the consequences of living longer is that more people require assistance in the latter years of their life. As you never know what's around the corner, it is as well to be prepared for possible difficulties. Common concerns that people have when thinking about if they were to lose mental capacity in the future are; 'who will look after my financial affairs?', 'what will happen to my property if I need to move into residential care?' and 'who will decide where I live and what level of care I require?'

The ability to cope with such an eventuality has been increased by the introduction of Lasting Powers of Attorney (LPAs), in the Mental Capacity Act 2005, whereby LPA's replaced Enduring Powers of Attorney (EPA) with effect from 1<sup>st</sup> October 2007.

## What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document by which you appoint someone whom you trust (your Attorney) to make decisions on your behalf during your lifetime about things such as your healthcare or finances.

## Why make a Lasting Power of Attorney?

Your Spouse, Registered Civil Partner, children or next of kin do not automatically have any legal authority to handle your financial or personal affairs. You can authorise them to do specific things on your behalf but if you become unable to give instructions, or to sign, they will not have the authority to continue to handle your affairs or make important decisions if you lose capacity.

The benefit of making an LPA now is that if at some stage in the future you suddenly become ill and cannot deal with your own affairs, your Attorney(s) will be able to step in and deal with your affairs on your behalf. In order for the LPA to be valid, you have to be capable of understanding its nature and effect, so it must be made while you are still mentally alert when you sign it.

## Who can you appoint as your Attorney?

This is a very important decision because once your LPA is registered, your Attorney will be able to make decisions about your personal welfare and/or property and finances. The Attorney must not only be someone you can trust completely but must also be available to deal with things on your behalf and be prepared to take on the responsibilities involved.

## What happens if you do not make an LPA?

If you do not have an LPA and you become mentally incapable, application must be made (usually by a close relative) to the Court's Public Guardianship Officer for the appointment of a Deputy to manage your affairs and make decisions on your behalf. The Application must be supported by a medical certificate from your doctor together with a detailed account of your family and property. The procedure can take several months.

## What is the difference between LPA's, EPA's and POA's?

Enduring Powers of Attorney (EPA's) were a fore-runner to the new Lasting Power of Attorney. Enduring Powers of Attorney were limited to financial affairs and do not allow your Attorney(s) to make decisions about your personal welfare. EPA's can no longer be made after 1<sup>st</sup> October 2007, however, if you made an EPA before that date, it will still remain valid and can be used by your appointed Attorney to manage your business affairs. General Powers of Attorney (POA) are limited to only dealing with financial matters and they will not be effective in the event that the donor of the power loses mental capacity.

## Where can I find out more information?

The Office of the Public Guardian website [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk) contains more detail on the Mental Capacity Act 2005 and has several guidance booklets that can be downloaded.

Barwells' own website also has more detailed information about preparing an LPA and contains contact details of the experienced practitioners based at each of our offices who will be happy to talk to you about any matters concerning LPA's.

Written by Tim Morgan, Partner and Head of Barwells Private Client Department  
Tel: (01323) 435473

Sponsored by Barwells Solicitors, Regulated by the Solicitors Regulation Authority.

