

## THE LASTING POWER OF ATTORNEY

**From time to time circumstances may arise when an individual either no longer wishes to make decisions concerning their affairs (including their property) or their personal welfare.**

In these situations the individual (the donor) can complete a Lasting Power of Attorney (LPA) whereby he or she chooses someone (the attorney) who is empowered to make decisions for the donor. The donor must have the mental capacity to complete the LPA.

In order for an LPA to be used it must first be registered with the Office of the Public Guardian (OPG). However it is permissible, and very common, for the LPA to be taken out but not registered until the donor wishes it to be registered or until the donor lacks the necessary mental capacity to make the decisions referred to above.

There are two different types of LPA:

- a Personal Welfare LPA; and
- a Property and Affairs LPA

### **A Personal Welfare LPA**

This allows the Attorney to make decisions on the donor's behalf concerning their personal welfare. This will include whether to give or refuse consent to medical treatment on the donor's behalf and deciding where the donor is to live.

### **A Property and Affairs LPA**

This allows the Attorney to make decisions on the donor's behalf about his or her property and affairs, including paying the donor's bills, collecting their benefits or other income, or selling their house, subject to any restrictions and conditions.

In addition to the donor and the Attorney (see above) there are three other important individuals, all of whom must be named in the LPA. These individuals act as important safeguards to protect the interests of the donor.

### **The named person**

This is a person chosen by the donor and stated on the LPA who must be notified when an application is to be made to register the LPA. The named person can object to the application.

### **The certificate provider**

This person must certify that the donor understands the LPA and has not been put under any pressure to make the LPA.

### **A witness**

The witness confirms that they witnessed the donor or Attorney signing and dating the LPA.

### **Our advice:**

Mental incapacity is not uncommon especially as age creeps in. Also, whilst an individual may still have mental capacity, they may lose the will or desire to make decisions simply because of their age. At times such as these the LPA can be of great assistance to the individual and can safeguard their interests.

Expert advice should, of course, always be taken when drafting and preparing the LPA. Please contact us if you require more details.