

## **What are Lasting Powers of Attorney?**

The Mental Capacity Act 2005 came into effect in October 2007 introducing the ‘new improved’ Lasting Powers of Attorney (LPAs), to enable you to appoint people to make decisions on your behalf when you are no longer able to make them yourself. There are two types of LPA:

- ‘Property and Financial Affairs’ (P&A) LPAs deal with your assets and financial matters, they replace Enduring Powers of Attorney (EPAs). An EPA made before October 2007 is valid, but it too now has to be Registered with the Office of Public Guardian (OPG) before it can be used
- ‘Health and Welfare’ (H&W) LPAs cover issues such as where you should live, what levels of treatment you should receive, and arrangements for your day-to-day care.

Before using an LPA it must be registered with the OPG, either by the person making the power - the ‘Donor’, or by their appointed Attorney/s. P&A LPAs can be used at the request of the donor while he or she still has mental capacity, with the attorneys taking complete control if the donor later loses capacity. They can therefore be used if the donor is physically incapable but has mental capacity and simply needs help with administering their affairs. H&W LPAs can only be used when the donor lacks the mental capacity to make their own decisions.

LPAs are more complex (and therefore more costly) than EPAs, and include many improvements:

- the H&W LPA covers all health & welfare decisions not catered for under an EPA
- it is possible to appoint replacement attorneys in case the attorney should become unable or unwilling to act, or loses mental capacity themselves
- it is possible to impose restriction and conditions or provide guidance for the attorneys, as to how they should act under certain circumstances, and whether or when they have to act together, or can act independently or a combination of the two
- it is possible to give attorneys the power to make decisions regarding life-sustaining treatment in the event of the donor becoming mentally incapable of making such decisions themselves
- the donor chooses an independent person/s to be notified of the registration process who will also be contacted by the OPG to check the notification, this has helped to prevent the fraudulent applications common with EPA’s

## **Why should you make LPAs?**

The benefits are considerable, including:

- it will make it easier for you to seek help with dealing with your property and financial concerns should you become either physically incapacitated or mentally incapacitated, whether through a progressive illness such as dementia or as a result of a serious medical problem or accident
- it avoids the need for an application to be made to the Court of Protection to appoint a Deputy, which is a lengthy and expensive process, and involves a high degree of uncertainty

- it will help prevent family disagreements as to who should be involved with your finances, as you will have made that decision in a considered manner before the event
- you and your relatives will have the comfort of knowing that trusted individuals will look after your affairs as soon as help is needed

### **What is the Court of Protection?**

LPAs should be a very serious consideration for every adult otherwise your family may have years of intrusion, and expense, as a result of having to deal with the Government's **Court of Protection** and their civil service administrators at the Office of the Public Guardian (OPG), to get PERMISSION for ALL decisions involving the use of your assets, even your joint assets!

There are over 60,000 clients registered with the Court, all considered by the Government to be too mentally incapacitated to act on their own behalf. Because they have not granted Power of Attorney to anybody, their affairs are placed under the jurisdiction of the Court. And their relatives must apply to the Court to be appointed to act on their behalf as the Court's 'Deputy'.

- The Court has full discretion as to who it appoints as its Deputy – it may choose a close family member eg spouse or child, or it could select a complete stranger or an organisation - such as a solicitor or local authority. The Court will decide, in private, if they think your family are 'fit to run your everyday affairs' as their deputy, if so, you then become answerable to the OPG.
- To apply to be a Deputy your family member has to complete a 50-page form giving huge amounts of personal information about themselves, their family, their own finances and their relationship with you - the person they wish to care for
- If they are appointed as Deputy – and it is by no means guaranteed they will be - the OPG charges numerous fees to supervise their activities - including: commencement fees (£240), appointment fees (£315), ANNUAL supervision fees (up to £800), administration fees (£190-£240), an account fee (£100), transaction fees (£60-£540), accountants fees (to produce annual report and accounts) , and finally, a winding-up fee (£290) – all of which will run over as many years as you have lost mental capacity
- The OPG takes full control of your finances and over the Deputies adult independence - they will continuously have to obtain authorisation from the OPG to pay expenses on your behalf, such as your general household bills, and then they will have to wait several weeks for the OPG to give permission and release the funds. And for every decision the OPG makes, they charge a Fee!
- And if the Deputy does not do everything they are told to do, they could lose the right to be the Deputy - an unknown person could step in and take over the running of your life.

Essentially the Court of Protection's primary role is to protect you from your loved ones, in order to protect itself from any accusations of wrongdoing should you ever recover mental capacity.

The Court of Protection is a cruel, alien, intrusive, costly , time consuming, archaic, bureaucratic and legal nightmare, and in its treatment of Deputies it does not distinguish between a close family member or a virtual stranger.

### **Is this what you want for your loved ones...?**