



## **CAN I MAKE MY OWN LASTING POWER OF ATTORNEY - INFORMATION FOR CLIENTS**

### **Walsh West Private Client Legal 2021**

#### Can I Make My Own LPA?

Having a [Lasting Power of Attorney](#) (LPA) in place is one of the most sensible decisions you can make in your lifetime. This legal document allows you to choose people to manage your affairs for you, should you not be able to. Whilst you can arrange an LPA yourself without legal assistance, there are ways that these documents can be left open to abuse if not completed correctly and there may be aspects you overlook, leaving the document invalid.

#### **When may I need a Lasting Power of Attorney?**

There are two main variations of LPA that can be set up during your life with their primary purpose to allow a person or people you have chosen to manage your affairs should you lose capacity to do so yourself. This could be due to developing dementia, if you have a stroke or if you sustain a serious injury.

A common myth is that LPAs are only for the elderly due to the association with a dementia diagnosis. Unfortunately, anyone can lose their mental capacity at any age if they are in a serious accident, for example. This is why it's important that everyone considers setting up an LPA once they reach 18 to have adequate plans in place for any eventuality.

The two LPAs that can be set up are:

- Health and care LPA – this LPA allows your attorney(s) to make decisions on your behalf regarding your general day to day care such as where you will live, as well as more serious health related concerns such as medication and end of life treatment.
- Financial LPA – this LPA means your attorney(s) can access your bank accounts to pay bills or manage your finances, and can also make decisions regarding your property and investments.



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## **What are the risks with a DIY LPA?**

An LPA may appear to be a simple legal document to complete, however this is a complex area of law and having an understanding as to the requirements is vital, which is why having legal advice to help you prepare the document is invaluable. There are unfortunately several ways that a DIY LPA can leave you vulnerable:

1. Choice of attorneys – one of the common misconceptions is that you choose one or two people to be your attorneys and that is the end of the matter. You not only need to consider who will be your attorney(s), but if you have more than one you need to specify which decisions will be made jointly, separately or a mixture of jointly and separately. You will also need to decide who will be your replacement attorneys should one of them not be able to be your attorney at the required time, which can be a particular issue if you have appointed the attorneys to make decisions jointly. You will also need to choose carefully to reduce the likelihood of disputes arising.

2. Execution of the LPA – there are strict rules in place as to who can witness and sign an LPA and any errors here will render the LPA invalid. If these errors are noticed then the LPA will be rejected and you would need to pay to resubmit the form. More damaging however is if the errors are only realised when the LPA is required at the time when you lose capacity, as you would then not be in a position to make a new LPA. The other errors that are commonly seen include incorrect forms being used, signatures in the wrong places and missing pages. While these may seem like easily avoidable errors, unless you are familiar with the process mistakes can, and do, happen.



3. Attorneys not being aware of their duties – discussing your intentions with your attorney(s) about appointing them is crucial so that they understand their duties under the Mental Capacity Act. Having an independent legal party to support you as the donor as well as the attorneys will ensure that everyone understands their roles and that there is no room for abuse, for example, enticing you into signing an LPA without due awareness of what you are agreeing to.

4. Required certification – In order for an LPA to be valid, there must be a certificate provided from an independent party confirming that you as the donor are aware of the LPA, the decisions being agreed to and who your attorneys will be. These can only be provided by Certificate Providers who would be someone you have known personally for 2 years or someone with relevant professional skills such as a Solicitor, doctor.

5. Wording of the LPA – having experience of drafting such documents as this is important to avoid any ambiguity as to your wishes, as any disputes or misinterpretation could leave the document invalid. Having a lawyer can also help you understand all of the different eventualities that need to be included within the LPA.

6. Additional documentation – if you have an [Advanced Directive](#) already in place consideration will need to be given to this document and your instructions for your health and care LPA.

7. Business arrangements – by seeking legal advice you can also understand the wider implications or requirements, for example, if you own your



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own business it may be prudent for you to set up a Business LPA to protect your commercial interests and the What happens if I don't have an LPA in places?

8. Future of your organisation - In the unfortunate situation where you lose capacity and there is no LPA in place, your loved ones would be faced with a long and arduous application process with the [Court of Protection](#) to apply to be a [Deputy](#). All of your assets are frozen until this is in place, which can take many months to be approved. The Court may also appoint a Deputy who you would not have chosen yourself, which is why having an LPA in place can give you the peace of mind that you have chosen the person you most trust to have your interests at heart.

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For initial advice about Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at [welcome@walshwestcca.com](mailto:welcome@walshwestcca.com) or via our website [www.walshwestcca.com](http://www.walshwestcca.com) and we will help you.