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A SHORT GUIDE TO A LASTING POWER OF ATTORNEY – INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

What is a Lasting Power of Attorney?

Thinking and talking about what would happen if our faculties deserted us is uncomfortable. Yet it's important to consider how much worse the situation would be if you had a stroke, serious accident or dementia (e.g., Alzheimer's) without sorting it first.

If someone has difficulties that mean they can't make decisions anymore, they will need help managing their finances. A Lasting Power of Attorney (LPA) is a legal document where someone (while they still have mental capacity) nominates a trusted friend or relative to look after their affairs if they lost capacity.

Don't think you suddenly give up control. You can choose whether it can be used either before, or only when, you lose mental capacity.

Your representative should only ever make a choice for you if you're unable to make that specific decision at the time it needs to be made.

For example, if you fall into a coma, your representative would start looking after your affairs. Yet if you wake from the coma, you should be able to make your own decisions again.

LPAs replaced the previous Enduring Power of Attorney (EPA) system. EPAs set up before 1 October 2007 will still be valid, whether or not they have been registered, though they must be registered when the person loses capacity. For more, see the Government's EPA info.

The Health and Welfare Lasting Power of Attorney

There are two types to consider:

1. **Finance and Property**, and
2. **Health And Welfare**.

In a nutshell, the health and welfare LPA sees a nominated individual make decisions over day-to-day healthcare and medical treatments, as well as deal with any health and social care staff.



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These are two separate legal procedures that are independent of one another.

Just because you give the trusted person power of attorney over your health, that doesn't mean they will automatically gain control over your financial affairs and vice versa. If you require the same individual to have power of attorney over both aspects of your care, then you will have to fill out the two forms separately.

Another key difference is that the health and welfare LPA can only be used after the person loses capacity, not before.

For those who want to decide any '**advance decisions**' – e.g., you don't want certain types of medical treatment in certain situations, if you lose capacity in future – you can make a living will.

How much does a Power of Attorney cost?

There's a compulsory cost of £82 to register a Power of Attorney (in England and Wales – it's £81 in Scotland, £151 in Northern Ireland). If you earn less than £12,000/year though, you can provide evidence to have a reduced fee of £41. Those on certain benefits are exempt from fees.

It's £82 each for the property and finance LPA and the health and welfare LPA, so if you get both, that's £164.

It is recommended to use a lawyer though it's possible to set up a Power of Attorney on your own.

Why set up a Lasting Power of Attorney?

If you lose mental capacity, unless you've already filled in the Power of Attorney forms, your loved ones will need to apply through court to become 'deputy', a long and expensive process.

Instead, you can nominate a trusted friend or relative before you lose capacity, by setting up a Lasting Power of Attorney (LPA). You can appoint one or more representatives to act for you, and can determine how they work together to make decisions on your behalf.

You can only set up a Lasting Power of Attorney when you have mental capacity. Once you've lost capacity, it's too late.

The key is to act early.



Who is this guide for?

Regardless of health, everyone should consider a Lasting Power of Attorney. Anyone over 18 can set it up – you don't need to be unwell. Charity Age UK says:

There's no specific age when you should consider making a Power of Attorney. Young people can lose capacity through accidents. But if someone is diagnosed with a condition likely to cause loss of capacity, they may be well advised to think about who they want to make decisions for them when they can no longer do so.

The most common conditions this relates to are: stroke, coma, delirium, concussion, severe mental health problems, neuro-disability/brain injury, alcohol and drug misuse, Alzheimer's and other forms of dementia.

What is mental capacity?

Every day we make decisions about our lives. The ability to make these decisions is called mental capacity. People may not be able to make decisions some or all of the time, perhaps because they have a learning disability, dementia, brain injury or have had a stroke.

It's important to note that living with a mental *health* condition (depression, bipolar disorder, schizophrenia, etc), doesn't necessarily mean someone lacks capacity. If a loved one has a mental health problem, download our stigma-busting Mental Health & Debt help booklet, aimed at sufferers, as well as friends, family and carers.

Who decides if someone has capacity?

The Mental Capacity Act 2005 says a person is unable to make a decision if they can't do one of the following: understand information relevant to a decision; retain that information long enough to make the decision; use or weigh that information; or communicate the decision. Read more on the Act's definition of capacity.

When you make a Power of Attorney in England and Wales, a 'certificate provider' decides if you're capable of making that choice. This can be someone you've known for two years or someone with relevant professional skills such as a doctor, lawyer or social worker.

What to do next

If someone's unable to look after their affairs but did not set up Power of Attorney in advance, carers need to apply to the Court of Protection. The court will appoint a deputy to make choices about the person's finances, usually a family member or close friend.



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There are two types of deputy: **a deputy for property and financial affairs**, and **a deputy for personal welfare**. The court decides whether a person who may have lost capacity is able to make decisions for themselves and if the friend/relative is the appropriate deputy.

How to find a lawyer

It costs £365 to register as a deputy and legal fees can be £1,000 or more. If the court decides the case needs a hearing, you'll need to pay £485 on top of that.

Deputies also have to pay an initial charge of £100 and ongoing supervision fees, which depend on the supervision level. These fees are £320 a year, unless you require minimal supervision, then it's £35.

Those on low incomes or on certain benefits can get the fees reduced or waived. See the Government's full list of fees.

It can be a long and costly process. Consider using a lawyer with specialist expertise. Contact us at Walsh West for immediate help and advice with setting up your LPA's.

For help and advice with 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 or via our website www.walshwestcca.com