

amicuslaw

SPECIALIST PRIVATE LAWYERS

LASTING POWERS OF ATTORNEY

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There are different types of Power of Attorney. An Ordinary Power of Attorney only lasts for a year and cannot be used if you become incapable of managing your affairs. Lasting Powers of Attorney (LPAs) (which have replaced the old Enduring Powers of Attorney) last until revoked and are used to appoint someone to act on your behalf in case you are no longer able to deal with matters yourself in the future. There are two types - Property & Affairs LPAs and Personal Welfare LPAs.

A Property & Affairs LPA appoints one or more people to make decisions for you in relation to your property and financial affairs. The power can be as wide or restrictive as you like and can include anything from paying bills to selling your house. You can direct that your Attorney(s) can manage your property and finances whilst you have capacity as well as when you lack capacity.

A Personal Welfare LPA gives your Attorney(s) power to make decisions about your personal welfare, including healthcare matters. This can include medical treatment or whether residential care may be more appropriate for you (also see Amicus Care Fees Planning Leaflet)

You can also give your Attorney(s) authority to make decisions about day-to-day aspects of your personal welfare but it is up to you which decisions you allow your Attorney(s) to take. If you want your Attorney(s) to make decisions about the withholding of 'life-sustaining treatment' this must be expressly given.

Attorney(s) you appoint to make personal welfare decisions on your behalf can only use their powers when the LPA is registered AND you lack the capacity to make these decision yourself.

1. Who can be an Attorney?

Any adult can be an Attorney as long as they are not mentally incapable or bankrupt. We suggest that at least two people are normally appointed

and additionally you can indicate who should be notified on any registration of the LPA.

2. What can my Attorneys do?

The power you can give your Attorneys can be wide and varied. Depending on whether you choose to make a Property & Affairs or Personal Welfare LPA, you can incorporate provisions ranging from allowing your Attorneys to access and manage your bank accounts to deciding your daily routine. These powers can be restricted or widened depending upon your circumstances and your own particular wishes.

3. When does the appointment commence?

Appointment of your Attorneys does not commence until the LPA is registered with the Office of the Public Guardian (OPG). You can register the LPA yourself while you are able to make decisions for yourself or it can be registered by your Attorneys.

When your LPA is submitted for registration, the person submitting the form must notify anyone you have said that you wish to be informed of the registration. If any of these people have concerns about the LPA, for example they feel you were put under the pressure to make it, they can object to the LPA being registered. This is an additional safeguard against potential misuse.

The completed registration application is then submitted with the appropriate fee. The OPG checks the LPA and sets a registration date (currently around 6 weeks from the date the OPG gives notice to anyone who did not join in the application to register). If there any objections, it may take longer to register your LPA whilst these are dealt with.

4. Is there any independent control of my Attorney?

An LPA has to be registered before it can be used and an initial safeguard as mentioned above is that you can specify who should be

informed on your Attorney(s) applying to register. They are able to object to the registration, and the OPG will carefully check the LPA and the application anyway to ensure they are satisfied the LPA has been completed properly. Once the LPA is registered the Attorney has a duty to provide accounts and details of how they are managing your affairs. If the Attorneys act improperly it is possible for their appointment to be terminated.

5. Do I need a Lasting Power of Attorney?

Unfortunately, it is not possible to clearly identify whether anybody will ever need an LPA or not. Incapacity is hard to predict and the difficulty which arises is that if a person becomes incapable it may then be too late to make an LPA, leaving only the much more expensive receivership procedure. A Lasting Power of Attorney can be seen as insurance against the more expensive alternative.

Making an LPA can be quite involved but we aim to make the process as straight forward as possible for you and the benefit of making absolutely clear how property and healthcare decisions should be made with for you if you become unable to make these decisions yourself is invaluable. For more advice contact David Satchell (david.satchell@amicuslaw.co.uk) for our Taunton, Yeovil and North Petherton Offices on 01278 664060 or Andrew Bensley (andrew.bensley@amicuslaw.co.uk) at our Minehead Office on 01643 701888.

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