



**Newstead
& Walker**
Solicitors

Facts about...

Lasting Powers of Attorney and the court of Protection

If illness or accident meant you were no longer able to look after your own affairs, somebody would need to do this on your behalf. Setting up a Lasting Power of Attorney (LPA) ensures that this person is someone you know well and trust to have your best interests at heart.

The need for an LPA is often associated with old age, but there are two good reasons for putting one in place sooner. Firstly, after capacity is lost, an LPA cannot be set up and then only the Court of Protection (see below) has power to appoint someone to act on your behalf. Secondly, incapacitating illness or accident is not confined to old age and having an LPA in place means you are prepared for every eventuality.

If you do not have a relative or friend to appoint as your attorney, or you feel unable to appoint these people for any reason, you can appoint Newstead & Walker to carry out this role on your behalf.

Powers of Attorney

A Lasting Power of Attorney (LPA) gives the person you appoint as your attorney the legal right to look after your affairs if you become incapable of doing so for any reason.

There are two separate types of Lasting Power of Attorney, one is a welfare power which, as the name suggests allows your attorney to make decisions concerning your welfare and the other is a property and affairs power allowing your attorney to deal with your financial affairs. You can appoint the same attorney to make both welfare and financial decisions for you but it is necessary to create two documents.

A Lasting Power of Attorney must be registered with the Office of the Public Guardian before it can be used and we can complete the registration process for you.

There are certain restrictions attached to the use of a property and affairs LPA, for example, they cannot be used to make gifts other than the usual birthday or Christmas presents and the person looking after your funds cannot use your money for their personal benefit.

It is advisable to make a Lasting Power of Attorney. Even if you never have to use it, you and your family do have the comfort of knowing that somebody can deal with your affairs if the need arises in the future.

Deputyships

If you have not made a Lasting Power of Attorney and you are unfortunate enough to lose mental capacity either as a result of illness or accident it will be necessary for an application to be made to the Court of Protection for the appointment of someone to look after your financial and, if necessary, your welfare affairs.

This is a cumbersome process attracting Court fees which means it is more expensive than having a Lasting Power of Attorney in place. The Court will usually appoint the person applying on your behalf (this can be a family member, a friend or professional) to be your Deputy and this person will take control of your affairs subject to the overall supervision of the Court of Protection.

If the Deputy wishes to sell your house or deal with your investments an application to the Court, involving additional fees, will have to be made for the Court's permission before the Deputy can proceed. In addition the Deputy must submit an annual account to the Court detailing all financial transactions carried out on your behalf during the year.

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What are the responsibilities of Attorneys and Deputies?

The main responsibilities of an Attorney you appoint through a LPA, or a Deputy that the Court of Protection appoints are to deal with financial matters such as:

- Claiming benefits
- Paying bills and care home fees
- Managing bank accounts
- Selling property

You, or the Court of Protection, can also elect for them to have powers to make decisions about your welfare, which could include issues such as whether you live in a care home.

Our Team



David also advises on Wills, Trusts, Estates, Tax planning, and setting up trusts for family businesses.

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