

# What if I am unable to manage my affairs?



## Growing older can mean problems for us and our loved ones.

- ❗ **Loss of mobility or illness can make it difficult to manage your affairs.**
- ❗ **The prospect of unpaid bills can cause unnecessary stress and anxiety and delay someone's recovery.**
- ❗ **Even the young can encounter problems due to accident or illness.**
- ❗ **An elderly relative losing capacity is difficult enough for loved ones to deal with, without the added worry that finances are becoming muddled.**

## In Detail

### What If I Am Unable To Manage My Affairs?

There may come a time in your life when you are unable to manage your financial affairs or personal welfare, owing to some form of incapacity and you will need someone to act on your behalf.

Even when we are young, we can find ourselves incapacitated owing to illness or injury and it can be invaluable having a reliable person, who is able to manage your personal affairs and remove the anxiety of having unpaid bills, at a time when you most need peace of mind.

Similarly as we get older, the need for an attorney increases as we are more prone to illness and injuries.

Creating an Attorney in advance, ensures that if the worst were to happen, you can rest assured that both your financial affairs and personal welfare are in safe hands.

### So Who Do I Choose?

You can appoint a friend, relative, or a professional as your Attorney. This allows them to act on your behalf.

It is important that you choose who you would like to act on your behalf very carefully. You should choose people you can trust to act in your best interests, giving consideration to how they manage their own affairs. It is always a good idea to appoint more than one Attorney to ensure that this power is not abused.

### The Different Types of Powers of Attorney

You may have heard of an Enduring Power of Attorney (EPA) and be aware that this was replaced in October 2007. (EPAs set up prior to 1st October 2007 remain valid, however, it should be noted that if the Donor is believed to be becoming, or is mentally incapable of managing their affairs then the Attorney(s) have a duty to register the EPA with the Court of Protection). It cannot be simply assumed that the Donor has lost mental capacity and Attorneys must follow the principles of The Mental Capacity Act 2005. Copies of the Code can be obtained from Her Majesty's Stationery Office.

If you hold an Enduring Power of Attorney and still have mental capacity and are able to make decisions for yourself (ie. the EPA is unregistered) you can make a Personal Welfare LPA to run in conjunction with the EPA.

### What has Replaced Enduring Powers of Attorney?

These have been replaced with three different documents:

- A Lasting Power of Attorney (LPA) for Property and Financial Affairs
- A Lasting Power of Attorney (LPA) for Health & Welfare
- A General Power of Attorney –

Please note these Powers are only applicable to England and Wales.

### **LPA for Property and Affairs**

A Lasting Power of Attorney for Property and Financial Affairs authorises the Attorney(s) to make decisions about the Donor's property and affairs. The Powers extend to all matters concerning the Donor's property and financial affairs: this could include buying property in the Donor's name, selling property belonging to the Donor, (including the Donor's home), managing their investments, continue to run their business and make decisions about the Donor's healthcare and payment for this care. You can place legally binding restrictions and conditions on your Attorney(s) powers and the scope of authority they have within the LPA, however these decisions may still need to be made for you which may then involve going to the Court of Protection and the decision being made which is in your best interests.

### **LPA for Welfare**

A Lasting Power of Attorney for Health & Welfare covers decisions about a Donor's personal welfare which can include where they live, how they are cared for and what healthcare they receive, for example the decision to send the Donor to a nursing home. The payment of the nursing home could not however be made on just the lasting Power of Health & Welfare (which would cover the decision to place the Donor in a home), but in conjunction with a Lasting Power of Property and Financial Affairs (which would cover the decision to pay for the care).

Attorneys of the Health & Welfare LPA can only use this power if the LPA has been registered and the Donor cannot make the decision themselves.

An Advance Directive or Living Will can be overridden by a subsequent Health & Welfare LPA if it expressly extends to lifesaving treatment. This also means that a Health & Welfare LPA can be overridden by a valid and applicable Advance Directive (Living Will) made after the LPA, if the LPA does not contain decisions regarding treatment. The Health & Welfare LPA form joins both the welfare and medical decisions and so the Donor may wish to separate them or exclude one power over the other.

An LPA must contain a certificate completed by an independent person to confirm that the Donor understands the power and importance of the LPA and is not creating the power under duress. This person must have known the Donor for at least 2 years. Anyone the donor specifies can be notified of the registration of the LPA (up to 5 people), however if there is no one to notify then the Donor must have a second Certificate Provider.

It should be noted that Lasting Powers of Attorney have no legal standing until registered with the Public Guardian's Office. They can be registered at any time ie: before the Donor loses mental capacity or when the Attorney believes this to have happened. Once registered they must be used in accordance with the stated conditions, this may include a restriction preventing it's use until the Donor lacks mental capacity in this matter.

After registration, the Donor can continue to make decisions providing they still have the mental capacity to do so.

### **Revoking or Cancelling the Power**

The Donor can revoke or cancel the LPA (providing they have the mental capacity to do so) if a spouse or civil partner is the Attorney, or Donor, dissolution or annulment of the relationship will automatically revoke the power.

An LPA for Property and Affairs is revoked if the Attorney(s) or the Donor are declared bankrupt however, an LPA for Welfare is not terminated by bankruptcy.

### **General Power of Attorney**

A General Power of Attorney allows the Attorney to make decisions and act in any matters relating to the Donor's property and affairs (with the exceptions of making a Will, making gifts or performing in the Donor's role as a Personal Representative (administrator) or Trustee.)

It is important to note that the Donor remains liable for the actions of the Attorney and as such you should only appoint an Attorney who you implicitly trust.

A General Power of Attorney (GPA) is effective immediately and will remain in force until it is either cancelled by the Donor (the person on whose behalf the Attorney is acting) or, should the Donor become mentally incapable, then the General Power is automatically revoked. The General Power would also be revoked by the death or bankruptcy of either the Donor or the Attorney.

Unlike a Lasting Power of Attorney, with a GPA there is no scope for restricting the Attorney's powers.

A General Power of Attorney can be revoked at any time by either writing cancelled across the document or simply tearing it up.

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