

## LASTING POWER OF ATTORNEY

A Lasting Power of Attorney (LPA) is a way of giving one or more individuals you trust the legal authority to make decisions on your behalf if you lack mental capacity at some time in the future. You must be over the age of 18 and have mental capacity (the ability to make your own decisions) when you make your LPA.

There are two types of LPA:-

- 1) Property & Financial Affairs
- 2) Health & Welfare

### 1) Property & Financial Affairs

This can be used while someone still has mental capacity with their permission. An Attorney (the person who makes decisions for you) can generally make decisions on things such as:-

- managing your bank account
- investments
- paying bills
- selling your home

### 2) Health & Welfare

This covers decisions about health and care and can only be used once a person has lost mental capacity. An Attorney can make decisions on things such as:-

- moving into a care home
- your medical care
- life sustaining treatment

Information that Simpson Wood Limited will require from you before they can prepare an LPA on your behalf:-

- 1) What type of LPA you require. Most of the LPA's we prepare for clients are the Property & Financial Affairs type. You can choose to make one type or both.
- 2) Who you want to appoint as Attorney(s) and if more than one, do you want that appointment to be "jointly" (so that all Attorneys must always made decisions together) or "jointly and severally" (so that your Attorneys can act together or independently). If the appointment is made jointly and one of your Attorneys dies, your LPA will be cancelled unless a replacement Attorney has been appointed. Most people choose "jointly and severally" because it is the most flexible and practical way for Attorneys to make decisions. You cannot chose anyone to be your Attorney who is under the age of 18, lacks mental capacity or is an undischarged bankrupt.
- 3) Who you want to appoint as replacement Attorney(s) if appropriate.
- 4) For a Property & Financial Affairs LPA, if you want to include any restrictions and conditions or guidance so that your Attorneys have to act in a certain way. The only circumstance in which you must write an instruction is in a property & financial affairs LPA if you have investments managed on a discretionary basis and you want that to continue.

- 5) For a Health & Welfare LPA, what authority you wish to give to your Attorneys regarding consent or refusal to life sustaining treatment and if you want to include any restrictions and conditions or guidance so that your Attorneys have to act in a certain way.
- 6) For a Property & Financial Affairs LPA, you must choose when you want your Attorneys to be able to make decisions. You have two options:-
  - As soon as my LPA has been registered
  - Only when I don't have mental capacity

The latter option can cause problems in practise as banks etc. sometimes want written confirmation that a donor does not have mental capacity each time the LPA is used.

- 7) If you want anybody to be told when an application is made to register your Lasting Power of Attorney with the Office of the Public Guardian. The people to be told could be friends or family members. You do not have to choose people to notify.
- 8) Who you want to be your certificate provider(s) A certificate provider is someone who you chose who can confirm that you understand your LPA, have not been put under any pressure to make it and that it has not been fraudulently completed. Your certificate provider can be either someone (not a family member) who has known you for at least two years or has relevant skill or knowledge to be able to form a professional judgement about your understanding. Nichola McNally of Simpson Wood Limited can act as your certificate provider.
- 9) Do you want your LPA to be registered as soon as it has been created? An LPA cannot be used until it has been registered with the Office of the Public Guardian and the registration process takes several weeks. We would therefore suggest that it is good practise to pay the registration fee and register the LPA as soon as it is made so that it is ready for immediate use should the need arise. This will also enable any problems with the LPA to be rectified whilst you still have capacity.
- 10) We shall need for the donor (person making the LPA) and the Attorneys, full name, address, date of birth and email address. We shall also need full name, address and date of birth of any people to be told when an application is made to register your LPA. If you are not using Mike Nicholas or Nichola McNally as your certificate provider, we shall need your certificate provider's full name and address and details of how they know you.

Further guidance is available at [www.gov.uk/power-of-attorney/overview](http://www.gov.uk/power-of-attorney/overview).

If you have any queries, Nichola McNally will be happy to discuss with you at an initial meeting to take instructions.

N C M McNally