MOORE Kingston Smith

LASTING POWERS OF ATTORNEY

Lasting Powers of Attorney (LPA) replaced Enduring Powers of Attorney from 1 October 2007. A Lasting Power of Attorney is a legal document which can take one of two forms, either (a) Health and Welfare, or (b) Property and Financial Affairs. You can have both. An Enduring Power of Attorney if signed before 1 October 2007 is still valid but will only cover your property and financial affairs and not your health and welfare.

LPAs must be set up while you have full mental capacity. Should you lose capacity and in the absence of an Enduring Power of Attorney (EPA) or LPA, your family, friends or professional advisers will have to apply to the Court of Protection to gain access to your assets and to make decisions about your health and wellbeing.

An LPA does not automatically give your attorneys control over your affairs. You can include restrictions, impose conditions and provide guidance to your attorney(s). In the case of Property and Financial Affairs LPAs, you can choose whether such should be invoked immediately, or at some point in the future.

We suggest everyone who has assets in England and Wales considers making a LPA. It may be possible for your LPA to be used in other countries. However, it is usually necessary for your LPA to first be legalised by the Foreign and Commonwealth Office whereby a certificate is attached to the LPA confirming its authenticity. Whether your LPA is accepted overseas will depend upon each country's own laws and so we suggest you take legal advice from local lawyers if you have assets in other countries.

Depending on how they are set up, LPAs can be especially useful to those who live overseas or spend a lot of time outside of the country but have assets or business interests in the UK. It allows your attorneys to sign documents on your behalf which can negate the need for the documents being sent to you as well as the risk of loss of documents and associated delays.

Lasting Power of Attorney for Property and Financial Affairs

A Property and Financial Affairs LPA gives your nominated attorney(s) authority to make decisions regarding matters such as buying or selling property, running your bank accounts, dealing with your bills and investing your money. This is particularly important when you hold assets solely in your name.

A Health and Welfare LPA gives your nominated attorney(s) authority to make decisions about your health and welfare which can include where you live, the type of care you receive and refusing or consenting to medical treatment and procedures.

This kind of LPA only takes effect once you have lost the mental capacity to make such decisions yourself.

Appointing your attorneys

You can appoint any number of attorneys, together with substitute attorneys but we tend to suggest that a maximum of four works best. Your attorney must be over the age of 18 and have mental capacity. It is important to appoint someone with the time and aptitude to undertake the role when required, as delays in signing instructions can create additional problems.

In addition you should consider carefully the risks of your appointed attorney(s) being unable to act due to either their own incapacity or death – should this occur your LPA could be rendered invalid.

You and your attorney(s) will need to sign the document before it is valid and other persons must also be involved such as a Certificate Provider or Nominated Person to ensure your protection. In order for the LPA to be utilised, it must first be registered with the Office of the Public Guardian (OPG).

It is worth noting that you can cancel your LPA at any time while you have the mental capacity to do so.

How can Moore Kingston Smith assist me?

Using a professional firm to prepare and register your LPAs can avoid mistakes which may result in your LPA being rejected by the OPG. Any LPAs not prepared or registered in accordance with the correct procedure will be rejected and you are likely to have to pay the OPG's registration fee again for any repeat application. Moore Kingston Smith will take your instructions and ensure that your LPAs are drafted in accordance with your wishes and are completed and registered in accordance with OPG guidelines. You do not have to have both types of LPAs, but as the intention is to cover any future eventualities it is sensible to draft them both at the same time, register them, but not to invoke them until necessary.

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