

band  
hatton  
button

solicitors  
Incorporating Varley Hibbs

## A Guide to Lasting Powers of Attorney

- Understand the importance of planning ahead.
- Understand the two different types of Lasting Power of Attorney.
- Understand the safeguards in place when implementing a Lasting Power of Attorney.



## Planning for the future

Sadly, almost all of us will be affected by issues of mental incapacity in some way during our lifetimes, either as sufferer, carer, family member or friend.

The benefits of drawing up a Will are widely recognised. In doing so, you make provision for who will attend to the administration of your estate on your demise and who will be your beneficiaries.

There are also opportunities available to make provision, in advance, for the possibility of you becoming incapable of managing your own financial affairs and personal welfare during your lifetime. Perhaps you are going travelling and want to appoint someone to manage your affairs while you're away. Or you may be worried that you will no longer be able to make important decisions about your life because of an illness such as a stroke or mental health problems or even an accident.

We provide specialist advice in relation to safeguarding your future by setting up a Power of Attorney, and can help you to put in place the best strategy to ensure that your affairs are properly dealt with.

A well drafted Power of Attorney will provide comfort for you and your family at a time when you may no longer be able to manage your own financial affairs or make important decisions about your health and welfare.

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that you (the 'Donor') make using a special Power of Attorney form.

It allows you to choose someone (the 'Attorney') you trust to make decisions about things such as your finances and property, at a time in the future when you are no longer able to, or when you may lack the mental capacity to make those decisions yourself, or simply need help with your affairs in your later years.

You can appoint an Attorney whilst you have the capacity to do so. They can then act for you, even if you later lack capacity to look after your own affairs. You can also appoint a Replacement Attorney or Attorneys to act in place of any Attorney who is no longer able or does not wish to make decisions on your behalf.

You can formally appoint a friend, relative or professional to hold a Lasting Power of Attorney that will allow them to act on your behalf. It is essential to appoint someone you trust to make decisions in your best interests and indeed they can only act in your best interests.

The appointment will be specific to you. You can decide who will have the power to control your affairs and the precise limits of that power.

## Types of Lasting Power of Attorney

A LPA comes in two forms, a Property and Financial Affairs LPA and a Health and Welfare LPA: -

### (1) Property & Financial Affairs LPA

A Property and Affairs LPA gives power to your chosen Attorney or Attorneys to make a range of financial and business decisions on your behalf and to deal with your property, including:

- Dealing with bank and other financial accounts, including opening and closing and day to day management of the accounts
- Paying bills
- Making investments
- Buying and selling property
- Claiming, receiving and using all state benefits
- Making limited gifts on your behalf (restrictions apply)
- Dealing with your tax affairs.

### (2) Health & Welfare LPA

A Health & Welfare LPA gives power to your Attorney or Attorneys to make decisions for you (only if you lack capacity to make these decisions for yourself) in a broad number of areas, such as:

- Where you should live and who you should live with
- Your day to day care, including diet and dress
- Who you may have contact with
- What social activities, leisure activities, education or training you should take part in
- Consenting to or refusing medical examination and treatment on your behalf
- Rights of access to personal information (such as your personal correspondence and papers) about you
- Assessments for and provisions of community care services
- Complaints about your care or treatment.

The Health and Welfare LPA also enables you to give express authority as to whether you want your Attorney to be able to consent to or refuse life-sustaining or life-prolonging treatment on your behalf.

### What if I already have an Enduring Power of Attorney (EPA)?

Lasting Powers of Attorney (LPA) came into force on the 1st of October 2007 and replaced the Enduring Power of Attorney (EPA) from that date, although EPA's already set up remain valid. If you have an unregistered EPA and still have the capacity to make decisions for yourself, you can make a Personal Welfare LPA to run alongside it.

### What are the safeguards?

There are a few safeguards:

- To prevent fraud a certificate of fitness is required, which must be signed by a suitably qualified independent third party (called a 'Certificate Provider') confirming that you fully understand what is involved in making a LPA, its nature and consequences, and that no fraud or undue influence has been used. In many cases, we will be able to perform the role of Certificate Provider.
- Next, you may name people to be notified that the compulsory registration process has started, and they will have the opportunity to object on certain grounds if they suspect any foul play.
- A LPA can only be used after it has registered with the Office of the Public Guardian (OPG). Registration can take place at any time after you have created the LPA and can take up to a couple of months to be processed.
- The OPG charges a fee of £82.00 per document for registration (this is the fee from 1 April 2017, before that it was £110.00). Clearly the sooner the LPA is registered, the quicker it becomes effective and available for use
- Attorneys must always act in accordance with the Code of Practice under the Mental Capacity Act 2005. If they ignore

the code, there may be the risk of a criminal offence

- Attorneys must also observe the restrictions and conditions you put in the power, and must comply with directions of the Court. The Court will investigate Attorneys if alerted to the possibility of abuse.

### What happens if I lose capacity and I do not have any Power of Attorney in place?

Sadly, some people cannot set up a Lasting Power of Attorney due to mental incapacity. In this case, there is a different procedure to follow by which you can apply to the Court of Protection to be made 'a Deputy'. As Deputy you would apply to the Court for a 'Deputyship Order' and as part of the application you would need to provide detailed financial and personal information to enable the Court to grant an order which will set out the extent of your powers. These powers are determined by considering the individual's needs and circumstances and can include powers relating to the individual's finances and personal welfare.

We direct you to our '[Guide to Deputyship](#)' for more information on this aspect of things. If you are planning for your future and wish to set up a LPA, let our team of experts guide you through the process.

### What should I do now?

Your Lasting Power of Attorney is a powerful document and therefore it is important that you obtain legal advice from a solicitor.

Each person or family have very different needs, so tailored advice is essential to achieve the best possible outcome.

**For individual advice and assistance contact our Wills, Trusts and Probate Team to find out how we can help.**

**Disclaimer - This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated into the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice**

### Why choose Band Hatton Button?

We deliver excellent legal services with a human touch and are proud to have a reputation for being approachable and going the extra mile for our clients. We provide high quality, pragmatic advice and offer a comprehensive range of legal services, delivered by experts and supported by our culture of respect and understanding.

#### Our expertise includes:

- Wills, estate and succession planning;
- Powers of Attorney and Court of Protection;
- Administration of estates and post death planning;
- Trust creation and administration;
- Will disputes;
- Matrimonial and family law; and
- Buying and selling a property

Earlsdon Park  
53-55 Butts Road  
Coventry  
CV1 3BH

☎ 024 7663 2121  
✉ [info@bandhattonbutton.com](mailto:info@bandhattonbutton.com)