



A GUIDE TO ACTING AS AN ATTORNEY UNDER A LASTING POWER OF ATTORNEY

What is a Lasting Power of Attorney (LPA)?

There are two LPA's that can be made, one that deals with Property and Financial Affairs, and one that deals with Personal Welfare concerns. An LPA is a document by which one person (the Donor) gives one or more people (the Attorney(s)) authority to manage their financial affairs and property matters, or look after their personal welfare. LPA forms must comply with requirements set out by the Government, and must be signed by the Donor, a Certificate Provider and the Attorney(s).

What can you do?

Subject to any restrictions or conditions specified in the LPA, you can deal with the Donor's property and finances or personal welfare decisions in exactly the same way as the Donor can him/herself. This may include:

- Operating the Donor's Bank/Building Society Accounts
- Managing investments
- Selling the Donor's property
- Making provision for others (including yourself) if the Donor might be expected to provide for that person's needs
- Making decisions on medical treatment
- Making decisions about where the Donor resides

If there is more than one Attorney, the Donor will have decided whether they should act jointly (all together on all matters) or jointly and severally (they may act together or separately, as the Attorneys choose).

Using an LPA

The LPA is legally effective once it has been registered with the Public Guardianship Office (PGO) but the Donor may have given instructions as to when he/she wants it to be used. Once it can be used, you will need to produce certified copies to the bank and building society, and any other organisations that you wish to deal with.

What you cannot do

You may not:

- Appoint a substitute or delegate your authority
- Act outside the powers given to you in the LPA e.g. if you are only named as an Attorney on an Affairs and Property LPA you cannot consent to any medical treatment on behalf of the Donor

You may not without the consent of the Court of Protection:

- Make a Will for the Donor
- Make gifts for Inheritance Tax planning purposes

Duties of the Attorneys

The LPA gives you authority to act. It does not impose a duty on you to do so. However, you do owe certain duties of care to the Donor if you do act:

- You must manage the Donor's affairs in accordance not only with the terms of the LPA but also with the requirements of the Mental Capacity Act 2005
- You must act in the best interests of the Donor and consider their needs and wishes as far as possible
- You must not take advantage of your position to gain any benefit for yourself
- You must keep the Donor's money and property separate from your own and other peoples'
- You should keep up to date accounts on behalf of the Donor
- You have a duty of confidentiality at all times unless the Donor consents to you disclosing information about them

What if the Donor becomes mentally incapable?

If you believe the Donor is, or is becoming, mentally incapable, you must register the LPA with the Public Guardianship Office, if this has not already been done.

An LPA cannot be used until it has been registered with the Public Guardianship Office (PGO). Once stamped and returned from the PGO a Property and Affairs LPA becomes valid immediately. A Personal Welfare LPA can only be used however if the Donor lacks the mental capacity to make decisions on their own.

You can get information about how to register the LPA from us, or from the Public Guardianship Office.

Duration of an LPA

The LPA will remain valid until one of the following events occur:-

- Death of the Donor
- Death of a sole Attorney; death of a joint Attorney; or death of all joint and several Attorneys
- Bankruptcy of the Attorney
- Revocation (cancellation) before Registration of the LPA by the Donor or by the Public Guardianship Office after Registration
- Disclaimer by you
- Your mental incapacity

Useful booklets are available from www.publicguardian.gov.uk

How to contact us

We welcome enquiries and consultations by telephone, letter and e-mail, or why not call in to one of our offices and ask for further information.



Chard Street
Axminster
Devon
EX13 5DS
Phone 01297 32345

29 Broad Street
Lyme Regis
Dorset
DT7 3QE
Phone 01297 443777

36A Fore Street
Chard
Somerset
TA20 1PT
Phone 01460 63336

Email: enquiries@scottrowe.co.uk

Website: www.scottrowe.co.uk