

## **Planning for the Future Series 4**

### **Lasting Powers of Attorney**

#### **What is a Lasting Power of Attorney?**

A Lasting Power of Attorney (LPA) is a special type of power of attorney in which the donor gives legal authority to another person or persons to make decisions for you if you cannot make the particular decision in question at the time that the decision needs to be made.

A general power of attorney cannot be used if the donor has lost mental capacity to make the decision.

Before 1.10.2007, it was possible to make an Enduring Power of Attorney in respect of financial decisions, these documents can still be used provided that they were made correctly.

#### **The Two Types of LPA**

You (the donor) are able to make an LPA in respect of decisions about property and finance including decisions about your home, payment of bills, insurance, management of bank accounts and investments. If you are physically incapacitated, you are able to instruct your attorneys to take certain steps regarding these types of matter.

#### **EXAMPLE**

Mrs Smith is very hard of hearing and she asks her daughter Jane to speak to British Gas on the telephone concerning an energy bill. Jane has authority to do this for her mum under the LPA.

If you lose mental capacity to make the decision at the time it needs to be made, your attorneys can make the decision for you.

You are able to make an LPA in respect of decisions about your health and welfare including nursing care, consent to medical treatment and where you live. Your attorneys only make the decision if you are unable to make the decision because you lack mental capacity.

In the health LPA, you are able to give your attorneys authority to make decisions to give or refuse consent to life sustaining treatment.

The LPAs are extremely powerful documents. In the right hands, your attorneys can protect and manage both your estate and personal care. In the wrong hands, there are problems because the attorney will have access to your bank accounts and savings.

Your attorneys must ALWAYS act in your best interests.

Attorneys are accountable to the Office of the Public Guardian and the Court of Protection but their intervention depends on an issue being raised by or on behalf of the donor. The Court can make different types of order to ensure that the money wrongly taken by an attorney is paid back to the donor but the attorney may not be traceable or may be a person of straw.

### **Selection of Attorneys**

It is essential that the attorneys are selected very carefully. It is usually advisable to have more than one so that there is an automatic check on each other's actions. Attorneys can be appointed jointly so that they need to agree to each and every decision taken or jointly and severally so that either can make the decision. Both attorneys are accountable in law for the action of the other.

Attorneys need to be able to co-operate with each other so that decisions can be taken. If there is a disagreement between attorneys the matter is decided in Court which is expensive and time consuming at a time when you are vulnerable and need a decision to be taken.

If you do not have any suitable family member who is willing and able to act as an attorney, you are able to ask the solicitor to act as your attorney. It is a normal private client service to act in relation to financial matter but solicitors rarely agree to be appointed to take decisions regarding health and welfare. The cost is paid for from your estate.

Solicitor attorneys are under a higher duty of care and regular annual contact needs to take place between the donor and the solicitor to check the position, any change in circumstances regarding finance or health. It is essential that the solicitor has full information regarding the finances to enable the role to be carried out properly.

## **EXAMPLE**

Joe Smith is 60 and is in good health. Joe is divorced and has three children and six minor grandchildren. Joe's friend Luke has recently had a stroke and this spurred Joe into action about making LPAs. Joe's children are Tom 35 an accountant, Lucy 33 a cashier and Ann 28 an artist. The children all get on ok. Joe doesn't want to cause any problem regarding who he appoints as attorneys but he is aware that Ann doesn't want to be involved with looking after his money but would want to be involved in making decision regarding his care.

Joe makes both LPAs and he appoints Tom and Lucy as his attorneys for finance with joint and several responsibility with Ann as a replacement stepping in if either Tom or Lucy was unable to act. Joe appoints all three children as his attorneys for health and welfare decisions. He gives joint and several responsibility for all decisions other than the question of consent to life sustaining treatment where he appoints the children jointly.

The family are all happy with this arrangement and the children spoke with the solicitor to ensure that they understood fully their legal duties.

Let's follow this EXAMPLE into an alternative scenario – Joe is 80 and he is frail and the children are now middle aged and live in other parts of the country. The grandchildren are busy making their own way in life and don't have a lot of contact with Joe. The family still gets on but the family ties have loosened. Joe gets lonely and has been befriended by Jim who is very helpful, he does the garden, shopping and spends time with Joe chatting and having a cuppa.

Joe didn't make the LPAs twenty years ago. He thought that he was too young and that he would never be frail or incapacitated. Jim talks to Joe about LPAs and that they would help Jim to look after Joe. Joe now thinks that it is a good idea to make the LPAs and appoints Jim as the sole attorney. Joe's family don't know anything about this, there is nothing in the procedure which gives the next of kin notice about the creation and registration of an LPA.

Oh dear, as soon as the LPAs become effective, Jim uses the authority to spend Joe's money on wild living and disappears to another country. Joe and his family are distraught.

## **SOLUTION**

You should make the LPAs when in good health and not leave them to another day. You should also obtain proper advice about the nature and effect of these incredibly powerful documents.

## **NEXT STEPS**

This is a basic guide, so contact us to talk about your wishes to enable us to advise you about your options and how we can help you.



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Naomi Pinder qualified as a solicitor in 1988 and for over 20 years she has specialised in helping clients in planning for the future through Wills, Trusts and Lasting Powers of Attorney; Probate and the administration of estates and trusts; capacity and Court of Protection; later life care planning and related elder client issues.

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