



CLARENCE TRUSTEES

WILLS, TRUSTS, & PROBATE



Should I Get An LPA ?

Tel: (01702) 333337

Fax: (01702) 414922

Email: mail@clarence-trustees.co.uk

Southend Office:

Estuary House, 37 Clarence Street,
Southend, Essex, SS1 1BH

SHOULD I GET AN LPA ?

Nobody likes to consider the possibility of becoming mentally incapacitated due to age, accident or illness - but the fact is that almost every family will eventually face this kind of difficulty.

A Lasting Power of Attorney (LPA) is an authorisation that provides legal permission to someone (called an "Attorney") to act on your behalf.

Everybody should consider naming a power of attorney to act in their best interests, in case they become unable to make their own decisions over the course of their lives.

Without an LPA, your loved ones would (in the event of you becoming mentally incapacitated) have to apply for a deputyship order. This can be very expensive and time consuming.

An LPA can only be made while you have the mental capacity to do so, but having made the LPA you can carry on making your own decisions for as long as you retain that capacity.

1. PREPARATION & EXECUTION

There are two types of LPA, one is for Financial Decisions and the other is for Health and Care Decisions. These must be prepared and executed as two separate documents and you can have either one, or both.

The Health and Care Decisions LPA

This confers powers relating to the type of health care and medical treatment you will receive, which can include where you live, day to day matters such as diet, routine and even life sustaining treatment.

The powers under this type of LPA only become useable once you no longer have the mental capacity to make your own decisions.

A Financial Decisions LPA

This confers powers to the attorney(s) to make decisions relating to your financial and property matters. This can be either when you become incapacitated, or when you are unavailable e.g. travelling out of the country.

2. REGISTRATION

An LPA must be registered with the Office of the Public Guardian (OPG) for it to be effective and useable when it is needed by the attorney.

This registration should be done when the LPA is created so that it will become readily effective and avoid any potential rejection later on.

To effectively plan for incapacity, you should consider executing and registering both a Financial Decisions LPA and a Health and Care Decisions LPA to cater for each circumstance.

3. SELECTING AN ATTORNEY

Signing a power of attorney that grants authority to someone to act on your behalf is a very serious matter.

Be sure to choose wisely and understand the powers being granted.

The attorney must be at least 18 years old and may be a family member and/or loved one, a trusted long-time friend or professional, such as the family solicitor or accountant.

More than one attorney may be named and can be empowered to act in different ways.

If you appoint more than one attorney and they are authorised to act jointly and severally, then they can act on their own or together. This is the most practical option.

Alternatively, if you appoint more than one attorney, they can be authorised to act jointly where they must agree unanimously on every decision.

Finally, if you appoint more than one attorney, they can be authorised to act jointly for some decisions and jointly and severally for others.

You can place any restrictions on what an attorney can and cannot do, although any such restrictions must be realistic and achievable.

It is therefore important for your intentions to be discussed carefully with the attorney, to prepare them to make appropriate decisions on your behalf.

4. RISKS AND CONCERNS

The legal authority conveyed by the power of attorney is both useful and potentially dangerous.

Although the power is simple to convey, the arrangement provides no oversight and few restrictions so it is important to weigh carefully the granting of a power of attorney.

Unfortunately, the lack of oversight with a power so broad could lead to abuse of these privileges.

Power of attorney abuse may take several forms:

- *Improper use of a donor's income or pledge or sale of assets for the attorney's own benefit rather than the intended beneficiary.*
- *Combining of donor's funds with the attorney's own funds and lack of record keeping.*
- *Changes to life insurance beneficiaries, granting gifts, or selling assets the donor did not intend to sell.*
- *A Power of attorney authorisation may itself be fraudulent, in some cases.*

For these reasons, therefore, it is important that any attorneys you appoint are completely trustworthy. That said, there are protections (see below).

5. PROTECTIONS

An Attorney has a legal duty to act in the donor's best interests and if he or she fails to do so it could be a criminal offence. So donor protection from unscrupulous attorneys is implicit in the LPA document itself. Also, an attorney cannot use the LPA to change the donor's will.

6. HOW WE CAN HELP

The simplest way of determining whether you might benefit from this document would be to ask yourself the question, "If I couldn't manage my affairs, who would have legal permission to do so for me?"

Somebody having legal permission to manage your affairs is a very different matter to someone just helping you out.

Banks, utility companies, even Local Authorities won't speak to a person who is just helping you out. They will only speak to someone about your affairs if they have legal authority. This can only be given through a registered Lasting Power of Attorney.

We will be pleased to take you through the process of setting up a Lasting Power of Attorney and registering it with the Office of the Public Guardian.

By using Clarence Trustees for the preparation, execution, and registration of your LPA you can be confident that your named attorneys will be able to act on your behalf and safeguard your best interests without delay.

Please contact us now about our LPA service.



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