

LASTING POWERS OF ATTORNEY

You may have made a Will but have you considered who would look after your affairs or make decisions on your behalf if you were unable to do so for yourself whilst still living?

Mental incapacity is not something which is reserved exclusively for the elderly, as anyone may suffer from incapacity as a result of an accident or disability. Indeed, it may be that you might not lose mental capacity as such but simply require someone to assist you while you are at home or in hospital.

Today, one in five people over 85 have some form of dementia and the Alzheimer's Society estimates that by 2025 over 1 million people in the UK will suffer from the disease. An appropriate Power of Attorney is therefore essential to ease the burden on your loved ones in the event of your future mental incapacity.

What is a Lasting Power of Attorney?

Very simply, it is a document which gives another person the legal authority to deal with your affairs on your behalf. There are two types of Lasting Powers of Attorney available; one for property and financial affairs and the other for health and welfare matters.

A Lasting Power of Attorney for Property and Financial Affairs enables you to appoint an Attorney who can make financial decisions on your behalf (including running your bank and savings accounts, dealing with your investments and income, buying and selling property and paying bills). Without this Lasting Power of Attorney your loved ones would not be able to manage your property and financial affairs.

A Lasting Power of Attorney for Health and Welfare gives authority to an Attorney to make decisions about such things as where you live or the treatment and care you receive when you can no longer make decisions for yourself. It can also empower your Attorney to give or refuse consent to life-sustaining medical treatment on your behalf. This Lasting Power of Attorney is extremely useful if you have particular wishes about the care you receive in later life or about resuscitation and the use of life-support machines etc.

If you were unable to remain safely in your own home and needed to go into a care home then Social Services would ask your loved ones if you have any Lasting Power of Attorney in place as decisions about some of the above might need to be made at that time.

How do I go about making Lasting Powers of Attorney?

A Lasting Power of Attorney can be quickly drawn up and can be prepared when making a Will or can be dealt with separately.

When making a Lasting Power of Attorney you are free to choose whom you wish to appoint. It can be anyone who is over the age of 18 and has not been declared bankrupt. You can appoint more than one Attorney and also replacement Attorneys.

You would also need to choose a person to be a Certificate Provider to certify that you fully understood the document you were signing and had not been coerced into making it. A Solicitor from our practice would be able to help with this. You would also need to nominate at least one other person who would be notified of the registration (see below) of the Lasting Power of Attorney when the time came. This person could raise objections if they had any legitimate doubts about your chosen Attorneys. This is a very important safeguard.

The Lasting Power of Attorney documents would need to be registered with the Office of the Public Guardian before they could be used by your Attorneys.

The minimum expense involved in setting up a Lasting Power of Attorney is the fee raised by the Office of the Public Guardian when applying to register a Lasting Power of Attorney. If you chose to ask a solicitor to assist you there would of course be their professional charges as well.

What happens if I don't have a Lasting Power of Attorney?

In the event of your incapacity your loved ones would have to apply for a Deputyship Order from the Court of Protection. The cost of an application to the Court of Protection can easily amount to well over a thousand pounds and more. An application to the Court of Protection is also fairly complicated and can take many months. A Deputy would have to pay annual insurance premiums and annual administration fees to the Court and would be required to deliver a formal account to the Court each year.

You would not have control over who was appointed as your Deputy. The Court of Protection ultimately makes that decision. Indeed, 90% of Deputies are Solicitors, which obviously gives rise to additional professional costs, which can be expensive.

If you do want to make things as straightforward as possible for your friends and family and wish to ensure that your money is not spent unnecessarily, it is very important that you consider making a Lasting Power of Attorney.

A Lasting Power of Attorney is a serious and powerful document and great care must be taken in making one. Mistakes made in the setting up of a Lasting Power of Attorney can lead to very real difficulties for your Attorneys and could even cause the Lasting Power of Attorney to be rejected when it is registered. For this reason we would encourage all our clients to seek professional assistance when making and registering a Lasting Power of Attorney.

If you wish for more information about making Lasting Powers of Attorney then the Solicitors and other members of the Private Client department at Ellis-Fermor & Negus will be happy to help.

Beeston Office

2 Devonshire Avenue, Beeston, Nottingham, NG9 1BS
Tel. 0115 9221591
Please ask for: Alison Forrest, Jo Bridges
or Jonathan Potter

Long Eaton Office

35 Derby Road, Long Eaton, Nottingham, NG10 1LU
Tel. 0115 9725222
Please ask for: Jackie Lewis

Belper Office

8 Chapel St, Belper, Derbyshire, DE56 1AR
Tel. 01773 821665
Please ask for: Grace Steele or Joanne Fletcher

Ripley Office

5 Market Place, Ripley, Derbyshire, DE5 3BS
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Please ask for: Jill Leam or Duncan Lyon

