

LASTING POWER OF ATTORNEY

We have recently had a few clients who, having come in to the office to make new Wills, have been asked whether or not they have Lasting Powers of Attorney (LPAs) in place. They have replied that “it is all dealt with in the Will” implying that they believe their Executors will be able to act as their Attorneys. It has to be pointed out to them that a Will deals with your affairs AFTER your DEATH, but if you have catastrophic injury such as a stroke or serious accident or become mentally incapable AND SURVIVE, there is very little another person can do for you unless they have been legally appointed to act as your Attorney.

If you do not have an LPA and lose capacity to deal with your own affairs, it will be necessary for the Court of Protection to appoint a Deputy to act on your behalf. This is not only a lengthy and expensive process but it has ongoing implications. Deputies may be required to pay Bond monies to the Court at the outset and must keep careful accounts which must be lodged with the Court annually (together with a fee).

An LPA is a legal document which a person over the age of 18 years and with full mental capacity may make. It is possible to make an LPA for (1) Property and Finance and/or (2) Health and Welfare. The person making the document is called the ‘Donor’. The Donor appoints another person(s) as their ‘Attorney’, giving them power to make decisions about their property & financial affairs and/or health and welfare. Up to four Attorneys may be appointed and the Donor may stipulate whether they may act independently of the others, or they must act together. It is also advisable to include substitute Attorneys in case the first appointed Attorney is unable to take on the role. The LPA must be registered with the Office of the Public Guardian *before* it can be used (£82.00 fee). The document may then be stored safely until either you give your permission for it to be used or a time when it is needed by your Attorney because you have lost capacity.

Principles of the Act that your attorneys must follow:

1. Your Attorneys must help you to make as many of your own decisions as you can unless they establish that you cannot do so.
2. They cannot treat you as unable to make the decision in question unless all practicable steps to help you to do so have been made without success.
3. They must not treat you as unable to make the decision in question simply because you make an unwise decision.
4. They must make decisions and act in your best interests when you are unable to make the decision in question.

5. Before your attorneys make the decision in question or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

It is possible to make an LPA without using a solicitor, however, mistakes may result in your LPA and Application being rejected by the Office of the Public Guardian and the fees paid may be lost. Solicitors have experience of making and registering LPAs on behalf of their clients so that costly and time-consuming mistakes may be avoided.

For further information please contact Tina at Alison Fielden & Co, The Gatehouse, Dollar Street, Cirencester, GL7 2AN. Tel: (01285) 653261. Open Monday – Friday 8.30 am – 5.00 pm and Saturdays, 8.30 am – 12.30 pm.