

## Property and Affairs Lasting Powers of Attorney

### What is a Property and Affairs Lasting Power of Attorney?

From 1<sup>st</sup> October 2007, you are able to make a new type of power of Attorney, called a Lasting Power of Attorney (LPA). A power of attorney is a legal document where a person gives another person or persons (the Attorney) authority to make certain decisions on his or her behalf.

A Property and Affairs LPA allows your Attorney(s) to make decisions relating to your property and finances as you specify. One of the main differences between the Personal Welfare LPA and the Property and Affairs LPA revolves around the issue of mental capacity. A Property and Affairs LPA can be used whether or not you have mental capacity, whereas the Personal Welfare LPA can only be used where you lack the relevant mental capacity to make such decisions for yourself.

### What types of decisions can be made through a Property and Affairs LPA?

Once registered, an Attorney under a Property and Affairs LPA will be able to make the same decisions that you are able to make in relation to the property and financial aspects of your life. Your LPA must contain the scope of powers that you wish to give to the Attorney(s). Decisions relating to Property and Affairs made by your Attorney(s) may include the following:

- buying and selling your house or property;
- opening, closing and dealing with the operation of any bank or building society accounts that you have;
- dealing with your taxation issues and making any tax returns on your behalf;
- paying bills and expenses; and
- claiming and using for your benefit, any pension payments, benefit payments or allowances.

It is important to note that this is not an exhaustive list of decisions that can be made by your Attorney(s), it merely highlights some of the aspects that you should think about in relation to the scope of the power given to your Attorney(s) before entering into a LPA.

### The “best interests” test

When a person lacks mental capacity, the Attorney(s) must take into account your best interests before making any decisions on your behalf. The Mental Capacity Act 2005 looks at the

test of best interests and identifies a number of factors that must be taken into account in relation to any decision. Such factors include:

- considering all relevant circumstances;
- considering whether mental capacity is likely to be regained in the future;
- making any decision on the basis of equal consideration with no discrimination involved;
- permitting and encouraging your participation in the decision; and
- considering past, present and future wishes and beliefs/values.

### Power to make gifts under a Property and Affairs LPA

The Lasting Power of Attorney allows for your Attorney(s) to make small gifts from your finances, however in doing so, your Attorney(s) must adhere to any restrictions that you have placed on such gifts in the LPA document. The provision of such gifts is very limited and must fulfil to the following three conditions:

- the persons to whom gifts are made must be persons who are related or connected with you;
- there must be an occasion such as a birthday, wedding, anniversary or other occasion where your giving of a gift would be usual; and
- the amount of the gift being made must be reasonable taking into account everything that you own.

### The Certificate Provider

Part B of the LPA form provides that an independent person (a “Certificate Provider”) must confirm that when making the power of attorney, you:

- understand its purpose and the scope of the authority it gives to the Attorney(s);
- no fraud or undue pressure is being used to induce the person to make the power; and
- there is nothing else that would prevent the LPA from being created.

There are two types of Certificate Provider: a knowledge-based Certificate Provider and a skill-based Certificate. A knowledge-based Certificate Provider is someone who has known you for the past two years and a skill-based Certificate Provider is someone who has relevant skills and expertise, such as a General Practitioner, solicitor, barrister or a registered social worker.

It is particularly important to note that if you appoint a solicitor or a solicitors' firm to act as your Attorney, the same solicitor or firm cannot be your Certificate Provider and vice versa.

### **Registering the Property and Affairs LPA**

There is a requirement that an LPA must be registered with the Office of the Public Guardian before use. You may choose to have up to five "named persons" listed on your LPA who you would want to be notified when an application is made to register your LPA. Upon being notified of such registration, any of the named persons can raise an objection with the Office of the Public Guardian.

### **We can help**

Because of the far-reaching nature of a Property and Affairs Lasting Power of Attorney, it is not something that should be done without first obtaining proper legal advice. If you wish to receive further advice on the creation or registration of Lasting Powers of Attorney, or dealing with someone's welfare under a Lasting Power of Attorney, please call 0870 160 1300 or email [pcd@thomaseggar.com](mailto:pcd@thomaseggar.com).