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What you need to know

Many of us will be affected by physical or mental incapacity at some stage in our lives.

According to the mental health charity Mind around 300 people out of 1,000 will experience mental health issues every year in Britain. The Alzheimer's Society estimate that by 2021 there will be 1 million people suffering from dementia in the UK and that this figure will continue to rise due to our increasing life expectancy.

Having Lasting Powers of Attorney (LPA) in place could make life much easier for both you and your loved ones.

What is an LPA?

An LPA is a legal document that enables you (whilst you have mental capacity) to choose someone you trust to act as your attorney to make decisions on your behalf.

There are two types of LPA:-

- one for Property and Financial Affairs which will enable your attorneys to manage your finances and property (LPA PFA)
- one for Health and Welfare which will enable your attorneys to make decisions about your healthcare and personal welfare (LPA HW)

When can an LPA be used?

An LPA must be registered with the Office of the Public Guardian before it can be used. For LPA PFAs, your attorneys will be able to make decisions on your behalf either when you have or when you lack mental capacity. For LPA HWs, your attorneys can only make decisions on your behalf when you lack the mental capacity to make the decision yourself.

Who can make an LPA?

Anyone aged 18 years or over who has the capacity to do so can make an LPA appointing one or more persons to act as attorneys.

Who can act as my Attorney?

Your attorneys should be people that you trust who are aged 18 or over and are not bankrupt. You can appoint one or more attorneys and it is also possible to appoint replacement attorneys.

We would always advise that you appoint two attorneys or, if that is not possible, one attorney and a replacement. This then covers the times that an attorney is on holiday or is no longer able to act as your attorney for whatever reason.

Replacement attorneys are people you can appoint to act in place of an attorney who is no longer able to or does not wish to continue as an attorney.

What decisions can my attorney(s) make?

This will depend on what document you have prepared and what decisions you have allowed them to make. If you have given them general authority to act on your behalf, they will be able to make all decisions that you would have been able to make but for your incapacity.

In general for an LPA PFA, an attorney can deal with any of the following (this list is not exhaustive):-

- opening and closing bank accounts
- paying bills
- buying, selling, and maintaining property
- making investments
- making limited gifts

Attorneys appointed under an LPA HW can make the following decisions (this list is not exhaustive):-

- where you should live
- what you should eat
- what medical treatment you should receive
- who you can have contact with

What decisions are my attorneys not able to make?

Your attorneys are only able to make gifts of a customary or seasonal nature (e.g. birthdays, anniversaries, etc) and these must be reasonable and proportionate to the size of your estate. If your attorneys wish to make any substantial gifts (for example gifts out of income or potentially exempt transfers for inheritance tax purposes) they must get authority from the Court of Protection.

Your attorneys are not entitled to access your Will unless you have given specific permission for this. They are also unable to make or amend your Will when you have lost capacity without making an application to the Court of Protection for a Statutory Will.

Your attorneys are not able to delegate their authority in any way and so, if you have investments that might be managed by a investment manager, you need to include specific authority within your LPA PFA for your attorney to continue to instruct that manager.

There are also statutory decisions that your attorneys cannot make such as consent to marry or divorce.

What happens if I need help but have no LPA?

If you do not plan ahead and there is a need for someone to deal with your affairs, then an application will need to be made to the Court of Protection for a deputy to be appointed to act on your behalf. The application process is time consuming and expensive. It can take up to six months for a deputy to be appointed and, in the meantime, no one can assist you with your financial affairs causing unnecessary stress and pressure to your family and loved ones.

How can Greenwoods GRM help?

Preparing an LPA for your property and financial affairs and/or health and welfare can act as an insurance policy against future incapacity. Our team can provide you with further information and advice on this area, suited to your personal circumstances. Contact +44 (0)1733 887665 and ask to speak to a member of our Private Client Team.

Whilst Greenwoods GRM LLP stands by the views and advice given in this document, the fact that two situations are rarely the same means that you should seek legal advice before relying on its contents.

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