

# Private Client

## Lasting Powers of Attorney

### *Factsheet*

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The Mental Capacity Act 2005 has changed the law so that from 1<sup>st</sup> October 2007, *Enduring Powers of Attorney* (EPAs) have been replaced by *Lasting Powers of Attorney* (LPAs). EPAs made before the 1<sup>st</sup> October will remain valid but no new EPAs can be now be made.

### WHAT IS AN LPA?

There are two types of LPAs, a Property & Affairs LPA and a Personal Welfare LPA:

- A Property & Affairs LPA will authorise another person or persons (your Attorney/s) to assist you with your financial affairs.
- A Personal Welfare LPA will authorise another person or persons (your Attorney/s) to make decisions in relation to your personal welfare.

### PROPERTY & AFFAIRS LPA

- Your chosen Attorney/s will be able to assist you in managing your financial affairs.
- You can appoint one or more Attorney/s (up to a maximum of 5) and you are even able to appoint replacement Attorney/s if your chosen Attorney/s cannot act for any reason. Please note that your Attorney must be over 18 and not bankrupt. You should ensure that your chosen Attorneys are people that you trust and will act in your best interests.
- If you appoint more than one Attorney, then you need to decide whether you want them to act 'together' or 'together and independently' (i.e they can act together or separately). It is possible to appoint your Attorney/s to act together in some matters and together and independently in other matters.
- Your Attorneys can only begin to assist you under the LPA if it has been registered at the Office of the Public Guardian ('OPG'). Once registered, you and your Attorneys can act alongside each other in dealing with your financial affairs whilst you retain mental capacity.
- The registration process will take 4 to 5 weeks and there is an OPG fee of £150. In view of the time it takes to register the LPA, you may decide to register the LPA immediately on creation (even if you do not need to begin using the LPA at that time) as it means that the LPA is ready when it is needed.
- If you lose your mental capacity, then the LPA remains effective (provided it has been registered at the OPG) and at this time, your Attorneys take over your financial affairs entirely. Therefore, the LPA *lasts* through mental incapacity.

## PERSONAL WELFARE LPA

- A Welfare LPA only comes into effect if you lack the mental capacity to make a certain decision concerning your personal welfare. Furthermore, In order for the LPA to be effective, it must be registered at the OPG as explained above.
- Your chosen Attorney/s would be able to make any decision that you can make about your personal welfare, subject to any restrictions you have placed on them, such as:
  - Where you live and with whom
  - Accessing personal information, for example, medical records
  - Deciding what you wear, what you eat and how you spend your day
  - Giving and refusing consent to medical treatment according to your best interests
- You can appoint one or more Attorney/s (up to a maximum of 5) and replacement Attorneys as explained above. Your Attorney/s must be over 18 and not bankrupt. You should ensure that your chosen Attorneys are people that you trust and will act in your best interests.
- You need to decide whether you want them to act 'together' or 'together and independently' (i.e they can act together or separately). It is possible to appoint your Attorney/s to act together in some matters and together and independently in other matters.
- The registration process will take 4 to 5 weeks and there is an OPG fee of £150. In view of the time it takes to register the LPA, you may decide to register the LPA immediately on creation (even if you do not need to begin using the LPA at that time) as it means that the LPA is ready when it is needed.

Gregsons has been in existence since 1788 and our Private Client Department has a specialist team of experienced solicitors and support staff who can assist in the preparation of LPAs. If you would like an informal chat to discuss matters further, please contact our Private Client Department on the telephone number listed below.

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For further advice on any Private Client matter please contact [privateclient@gregsons.co.uk](mailto:privateclient@gregsons.co.uk) or telephone our Private Client department on 020 8946 1173. This factsheet has been written for the general interest of readers and is intended for general guidance only. It is essential to take specific professional advice before taking any action.

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