

Here Sarah Hartley, Director and Solicitor at Malcolm C Foy & Co, gives a brief overview of Lasting Powers of Attorney

Lasting Powers of Attorney – what are they?

- A Lasting Power of Attorney ('LPA') is a document that is created which gives a person ('the attorney') power to be able to deal with your financial affairs if it is difficult or impossible for you to do this yourself
- A LPA can only be created when a person has mental capacity. If a person does have this capacity, they are able to choose someone who they trust to deal with their finances. This may be necessary because, for example, a person has mobility problems and cannot attend the bank themselves, a person has had a stroke and can't communicate on the telephone, or a person has memory problems and it would simply be more convenient to allow someone else to take care of things financially.
- Your attorney is under a duty to always act in your best interests, and whilst you still have your mental capacity your attorney should consult with you before making decisions. As such, no power is being taken away from you to deal with your own affairs, but you are allowing someone to help you out if needed

What happens if I don't make an LPA and I lose mental capacity

- If you are unfortunate enough to lose your mental capacity access to your finances will almost certainly be required. Bills will still need to be paid and money will still need to be collected, however if you do not have capacity you will be unable to do these things yourself and no-one else will have the authority to act on your behalf unless an LPA is made.
- If no LPA is in place and access to your finances is required, or a property needs to be sold in order to pay for care home fees, then it will be necessary to apply to the Court of Protection to have someone appointed as your 'Deputy'. The Deputy will be granted the same powers as an attorney would have, however this process is expensive and time consuming. The total charges of applying to Court can be into thousands of pounds, which is several times more than the cost of an LPA. Additionally, if a Court of Protection Order is granted, then you do not have the choice of who will act on your behalf, the Court will decide on the most suitable person for the job.

What to think about if you decide to make an LPA

- Who would you like to act as attorney? You can appoint more than one person at a time, and you can appoint a replacement in case your first choice is unable to act. If you decide to appoint more than one attorney, do they have to consult each other over every decision or can they act independently of each other?
- Do you want to put any conditions or restrictions on your attorneys, for example 'I do not want my attorney to be able to sell my house'?
- Do you want to pay your attorney a fee for acting? Usually, if you appoint a family member no fee is paid, but if you appoint a professional person e.g. a solicitor they will require payment for their services.
- Who could act as a 'person to be notified'? This simply means a person who is independent of you and the attorney who can be informed that we intend to create the LPA and can be given the option to object if they feel the attorney is not suitable.

What are the costs involved?

- The cost of a single Lasting Power of Attorney are £300 plus VAT, and £550 plus VAT for a couple
- There is also generally a registration fee payable of £110 per Lasting Power of Attorney, which is payable to the Office of the Public Guardian for registering (and therefore making effective) the Lasting Power of Attorney. If you receive Guarantee Pension Credit, Housing Benefit or Council Tax Benefit you will not need to pay this fee, and if your gross income is under £12,000 per year you will receive a 50% reduction in the registration fee

* Advice and costs correct as at 21st April 2015