



## Quick Guide to making a Lasting Power of Attorney ('LPA')

### There are two kinds of LPA:

- Property and Financial Affairs ('Financial')
- Health & Welfare ('Health')

### What is an LPA?

It's a document which allows you to appoint one or more attorneys ( this will normally be a close friend or family member, although we can act if required ) to make decisions about your finances, health and welfare if you lose mental capacity. These are important issues. You should take legal advice to ensure your LPA is properly prepared.

### Why should I make one? – Do it now before its too late!

Loss of mental capacity can happen at any time, if you have an accident, stroke or other illness. It can develop in middle or old age without you realising it. When it happens it can mean, no-one can access your bank accounts, you can't buy or sell property or make other financial decisions. Health and social services may make decisions you don't want them to. If you have a progressive loss of capacity, or want control over your affairs in later life, it is important to plan ahead.

### Can I make an LPA if I've been diagnosed with dementia?

Yes. A diagnosis of dementia doesn't prevent you from making an LPA. Everyone's dementia is different. If you have been diagnosed then we will be happy to discuss with you whether or not you have the mental capacity to make one. The tests your doctor makes to assess your mental capacity are different to those we use. We have been able to help a number of clients who have dementia to make an LPA. **We would recommend anyone living with dementia to make an LPA if they can.**

### Best interests statement

Any decision made by an attorney must be in your best interests. This can be particularly relevant when it comes to medical treatment or social care. We can provide a form in which you can record your wishes as to the treatment and or care you would and wouldn't want to receive.

### Who makes decisions about my finances and health if I can't? (Where you don't have an LPA)

They can be made by a variety of people. These include social services, doctors, the courts, or family members you wouldn't want in control of your money or life. **A spouse or other next of kin has no automatic right to make medical decisions for you. They will have no access to your bank accounts and can't sign other documents on your behalf.**

### If I don't have an LPA?

Application has to be made to the Court of Protection for the authority to make decisions on your behalf. This is time consuming, restrictive and expensive. You have no control over who is appointed to make decisions on your behalf. The Court won't give anyone general authority to make decisions about your welfare.

### **If I make an LPA?**

You choose who makes decisions for you. You can set out conditions and guidance as to how they should act. We recommend you make a best interest statement as to the medical treatment you do and don't want.

### **How do I make an LPA?**

You complete an LPA Form. There are separate forms for Financial LPA and Health LPA. They need signing by you and all your attorneys. You need to sign in our presence, but your attorneys can sign when and where it's convenient.

Ideally, we need to see you twice, but if we discuss matters in advance, a single meeting can suffice.

### **How many attorneys do I need?**

We recommend two plus a spouse/partner if you have one. We will need their full names, addresses and dates of birth. It is important you discuss with your attorneys their appointment and that they are happy to act. Try to ensure at least one attorney is some years younger than you. If you own a property with one or more people the situation can be a little more complicated.

### **Legal issues to consider**

Lasting Powers of Attorney are important documents. If you lose mental capacity they can be invaluable in ensuring your finances are properly managed and that you enjoy a good quality of life. To ensure they are valid and as useful as possible you should take legal advice. There are a number of issues to think about and it's important you get them right. These include:

- The implications of the Mental Capacity Act on Lasting Powers of Attorney
- Understanding what mental capacity means in practice
- Knowing how many attorneys to appoint
- Making sure you can sell your home if needed without a court order
- Understanding the difference between joint and several appointment of attorneys
- Protecting your quality of life
- Avoiding disputes over whether you have the mental capacity to make a Lasting Power of Attorney

### **Registration**

While you can create a valid LPA without registration, your Attorneys will not be able to act on your behalf until it has been registered with the Office of the Public Guardian ('OPG'). Having created an LPA is a useful first step. You can then look to have it registered when your attorneys need to use it. You should appreciate however that registration can take in excess of two months and in such circumstances the LPA will not be available to use if a sudden emergency arises.

### **Where can I find out more about making an LPA?**

This is only a brief explanation. We have a longer guide we can send you and are happy to answer any questions. We will discuss matters with you fully when we see you. **Call us on 020 8232 9560 and ask for the Estates department or email Nigel George [ngeorge@garner-hancock.co.uk](mailto:ngeorge@garner-hancock.co.uk)**

**This is general advice and is meant for information purposes only. It should not be relied upon and specific advice should be obtained on any legal problem.**

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