

GUIDE TO LASTING POWERS OF ATTORNEY

Every adult should consider the implications of becoming incapable of managing their own affairs, whether because of accident, ill-health or old age. By making arrangements to put in place a Lasting Power of Attorney (LPA), you can ensure that your best interests are looked after even if you can't make decisions for yourself.

WHAT IS A LASTING POWER OF ATTORNEY (LPA)?

A Lasting Power of Attorney is a document that lets you (the 'Donor') appoint someone (an 'Attorney') to make decisions on your behalf about your property and finance. It can be used at any time in the future if you are not able to make your own decisions or simply need assistance. A Lasting Power of Attorney can also be made for health and care decisions, but this can only be used if you are mentally incapable of making such decisions yourself. A Lasting Power of Attorney must also be accompanied by a certificate, from an authorised professional person, such as a GP or Solicitor, or someone who has known the Donor for at least 2 years, to confirm that there was no fraud or undue pressure and that the Donor was capable of understanding the document when it was made. If all requirements are met, the power will be formally registered with the Office of the Public Guardian. A Donor may revoke their LPA at any time, provided they have the capacity to do so.

WHAT IF THERE IS NO LPA IN PLACE?

If no Attorney has been appointed and you are unable to make your own decisions, the only course of action is for an application to be made to the Court of Protection to appoint a Deputy. This is considerably more expensive, time consuming and complicated. For more information please see the [Mogers Drewett Guide to Deputyships](#).

PROPERTY AND FINANCIAL AFFAIRS LPA

Scope of Powers

An Attorney can operate a bank account, make investment decisions, sign tax returns, pay bills and sell and purchase property.

GIFTS

An Attorney may only make gifts:

- On 'customary occasions' (such as birthdays, marriage and Christmas) to persons, including the Attorney, who are related or connected with the Donor
- To any charity to whom the Donor made or might have been expected to make gifts
- The value of such gifts must be reasonable with regard to the circumstances and, in particular, the size of the Donor's estate.

The Court of Protection has the power to authorise more substantial gifts if satisfied that this would be in the Donor's best interests. This could include lump sum inheritance tax planning arrangements for Donors with significant assets.



RESTRICTIONS

There are certain acts, which are considered too personal to be delegated to an Attorney.

These include:

- Signing the Donor's Will
- Taking on the Donor's role as a life tenant
- Appearing in court, in the Donor's place, as a witness

HEALTH AND WELFARE LPA

Scope of Powers

An Attorney can make best interest decisions as to where the Donor lives, care and medical treatment for the Donor and restraint of the Donor in certain circumstances.

RESTRICTIONS

Where an LPA authorises an Attorney to make decisions about the Donor's personal welfare, certain restrictions apply:

- An Attorney can only authorise restraint of the Donor to prevent harm and it must be proportionate
- The Attorney's authority does not extend to making decisions in circumstances other than those where the Donor lacks, or the Attorney reasonably believes that the Donor lacks, capacity
- The authority is subject to valid "advance conditions" made by the Donor concerning the carrying out or continuing of a medical treatment
- An Attorney cannot refuse life-sustaining treatment unless the LPA expressly says so

ENDURING POWERS OF ATTORNEY (EPAS)

Since October 2007 it has not been possible for a person to create an EPA. However, existing EPAs, whether registered or not, continue to operate. If an Attorney has reason to believe that the Donor of an EPA is becoming mentally incapable of managing his or her own affairs it is necessary for the EPA to be registered.

HOW TO CLAIM YOUR POWER OF ATTORNEY REFUND

The Government has announced that if you paid a power of attorney registration fee between 1 April 2013 and 31 March 2017, you could be due a refund of up to £54. Estimated to be available to 1.8m people who registered during the four year period, the refund applies to both lasting powers of attorney and enduring powers of attorney.

David Hill, Partner and head of the Private Client team at Mogers Drewett said, "At Mogers Drewett, between 2013 and 2017 we made nearly 700 power of attorney registrations on behalf of our clients and we're delighted to share that they can now claim back part of their application fee." "The refund is paid to the donor (the person who made the power of attorney) but the claim can be made by either party - the donor or the attorney (who was appointed by the donor)."

To make a claim, please visit the Government Power of Attorney Refund website [here](#).

Bath 01225 750 000 | **Sherborne** 01935 813 691 | **Wells** 01749 342 323