



AWDRY BAILEY & DOUGLAS

S O L I C I T O R S

POWERS OF ATTORNEY



It may be that you need to appoint someone to look after your affairs if for whatever reason you are unable to do so yourself. Perhaps you are going abroad and things will need to be looked after while you are away or you are concerned about illness or mental capacity.

Your spouse, partner or “next of kin” does not automatically have legal authority to deal with your financial or personal affairs which is why a Power of Attorney can be so useful.

If you have a Power of Attorney and at some point in the future you suddenly become ill or suffer an unexpected accident your Attorney (or Attorneys) will be able to step in and look after everything until you recover. If you lose mental capacity it will be too late to appoint an Attorney after that time.

After mental capacity has been lost the Court of Protection may need to be involved in making decisions on your behalf unless there is a Lasting Power of Attorney (or an old style Enduring Power of Attorney).

In this way a Lasting Power of Attorney can significantly ease the administrative burden on family members especially in the event of loss of mental capacity.

GENERAL POWERS OF ATTORNEY

You can grant a General Power of Attorney but if you lose mental capacity the General Power will be automatically revoked and your Attorneys will no longer be able to act for you.

LASTING POWERS OF ATTORNEY

Unlike a General Power of Attorney, a Lasting Power of Attorney (LPA) will not be revoked if you lose mental capacity and there will be no need to apply to the Court of Protection.

- ▶ Your Attorneys can take a limited role such as paying bills or collecting any payments. Alternatively, you can give them the power to buy and sell property, operate your bank account, deal with your tax affairs or even make medical or care decisions on your behalf.
- ▶ Your Attorneys can only use your LPA if it has been registered with the Office of the Public Guardian. An LPA is not valid unless it has been registered.
- ▶ The registration of an LPA usually takes several weeks after the application has been submitted to the Office of the Public Guardian.

THERE ARE TWO DIFFERENT TYPES OF LASTING POWERS OF ATTORNEY

- ▶ Property and Affairs LPA
- ▶ Health and Welfare LPA

You can make either or both types of LPAs. Many people decide to only make a Property and Affairs LPA. If you like you can appoint different Attorneys under each type of power.

WHO SHALL I APPOINT AS MY ATTORNEYS?

You can appoint anyone over the age of 18. A person who is bankrupt cannot be an Attorney. It is important that you have complete trust in your Attorneys and confidence that they will make the right decisions on your behalf.

HOW MANY ATTORNEYS SHOULD THERE BE?

You can choose as many Attorneys as you like and you can name replacements in case any of your Attorneys are unable to act or have died.

SHOULD THE ATTORNEYS ACT JOINTLY?

You can indicate whether you want your Attorneys to act together or whether they can each act independently. For example, if you appoint two Attorneys and indicate that they must act jointly then no decisions or actions can be undertaken unless both Attorneys agree. If however you state that the Attorneys can act independently this can assist in a situation where, for example one Attorney is overseas and the other Attorney needs to make an immediate decision.

WHAT SORT OF DECISIONS WOULD MY ATTORNEYS MAKE?

Property and Financial Affairs

With this type of LPA, your Attorneys would normally be able to make decisions such as

- ▶ Authorising day to day expenditure
- ▶ Dealing with your bank accounts
- ▶ Dealing with the sale of your house
- ▶ Communicating with insurance & utility companies
- ▶ Instructing your solicitors, accountants and other professionals

Health and Welfare LPA

With this type of LPA, your Attorneys can be given the power to make decisions relating to

- ▶ What medical treatments you should have or not have
- ▶ What type of healthcare you should receive
- ▶ Whether you should continue to live in your own home or move into a residential care home
- ▶ How you should be dressed and looked after
- ▶ What diet you should have
- ▶ What your daily routine would consist of

These decisions will only be made for you if you are unable to make them yourself.

Any decisions made by your Attorneys must be made in your best interests.

CAN MY ATTORNEYS MAKE GIFTS?

A Property and Affairs LPA would allow your Attorneys to make small gifts to people who are related or connected to you on special occasions such as birthdays or weddings, or on occasions which are considered customary within your family. Reasonable gifts can also be made to charities that you have donated to in the past. Large gifts of money or assets such as your property, can only be made with the consent of the Court of Protection.

SHOULD THE POWERS OF MY ATTORNEYS BE RESTRICTED?

You can include restrictions in the LPAs so that your Attorneys are limited in the steps they can take. Alternatively with a Property and Affairs LPA you can specify that your Attorneys can only act if you become mentally incapable.



LASTING POWERS OF ATTORNEY

WHEN CAN MY ATTORNEYS MAKE DECISIONS ON MY BEHALF?

With a Property and Affairs LPA your Attorneys can act immediately after it has been registered at the Office of the Public Guardian whereas under a Health and Welfare LPA your Attorneys only have authority if the LPA is registered and you become mentally incapable.

DOES THE LPA HAVE TO BE SIGNED BY ANYONE ELSE?

You must select a person to complete the part of the LPA form confirming that you understand the document and that you are not under any pressure to grant the power. This person is called a Certificate Provider. This can be someone who you have known personally for at least two years or someone who has the relevant skills and expertise such as a doctor or solicitor. We can do this for you. In some cases two Certificate Providers are required.

DOES ANYONE NEED TO BE NOTIFIED OF THE LPA?

There is no legal requirement to notify anybody but you can choose to notify somebody or a number of people if you wish to do so. Any notified person can object to the registration of the LPA with the OPG and there are certain prescribed grounds for lodging an objection.

CAN I STILL MAKE DECISIONS FOR MYSELF AFTER MY LPA IS REGISTERED?

Yes, you can still make your own decisions. Your Attorneys can act for you if it is convenient for you but if you disagree with the steps taken by your Attorneys and if you still have the mental capacity to do so you can revoke the LPA. LPAs can be revoked by notifying the Office of the Public Guardian.

WHAT HAPPENS IF I DO NOT MAKE AN LPA?

If you become incapable of managing your own affairs and you don't have an LPA someone will need to apply to the Court of Protection for a "Deputy" to be appointed who will then act on your behalf. It is usually a close relative who makes the application. Unfortunately the procedure can take several months and can be quite expensive.

After a Deputy has been appointed the Court of Protection directs how the Deputy should act. Deputyship should be avoided if at all possible because of the costs and the delays.

ENDURING POWERS OF ATTORNEY

Until 30th September 2007 it was possible to appoint an Attorney under an Enduring Power of Attorney (EPA) and if you already have an EPA in place it may still be valid. Unlike an LPA, an EPA must be registered with the Office of the Public Guardian only if the person who has appointed the Attorney has already lost mental capacity or is becoming mentally incapable.

WHAT IS A "LIVING WILL"?

A Living Will is a document in which you indicate your views and decisions regarding medical treatment while you are still capable of making and communicating those decisions.

A Living Will can either be an "Advance Decision" or an "Advance Statement".

An Advance Decision is a decision to refuse medical treatment. An Advance Statement contains other decisions about how you would like to be treated. Only an Advance Decision is legally binding. An Advance Statement should be taken into account when deciding what is in your best interests.

This is a sensitive and complex area of law. There is also an interaction between a Living Will and a Health and Welfare LPA. We can discuss the options carefully and thoroughly with you if you think that this might be of interest to you.

AND FINALLY...

MAKING A WILL 3 SIMPLE STEPS

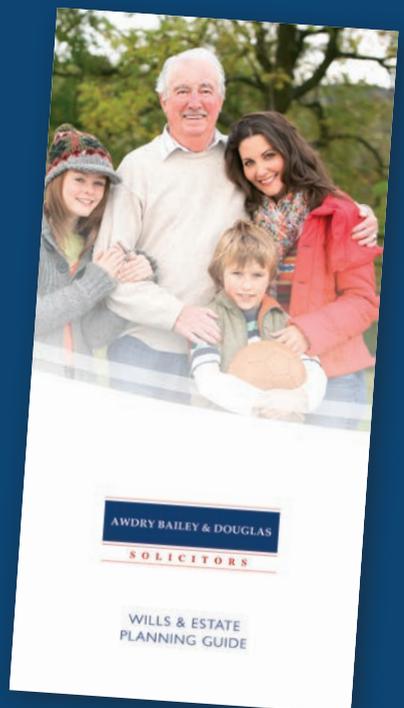
Many people don't make a Will because it never seems to be the right time. We all lead busy lives and making a Will might not seem like a priority so we have made the process as simple as possible.

There are three simple steps:

- 1 Decide what type of Will suits you and who you would like to leave money or property to.
- 2 We will arrange a meeting with you (either at one of our offices or if you prefer at your home) or we can take your initial instructions over the telephone.
- 3 We will prepare the Will for you to check and then make arrangements for you to sign.

Making a Will is not as time consuming or as expensive as you may think...

Please speak to us about making a Will or ask for a copy of our Wills Guide.



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