

## Enduring or Lasting Powers of Attorney – Lastingpost.com

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### Enduring Powers of Attorney

As of the 1<sup>st</sup> October 2007 Enduring Powers of Attorney (EPA) can no longer be given but existing EPAs will remain valid and can still be used and registered. An EPA gives an Attorney or Attorneys power to deal with an individual's property and financial affairs. It does not automatically grant a power to deal with personal welfare but it is likely that in the majority of cases any EPA Attorney will be considered to be the appropriate person.

The Office of the Public Guardian is responsible for maintaining a register of EPAs which can be searched by any person on payment of a fee

### Lasting Powers of Attorney

Lasting Powers of Attorney were created by the Mental Capacity Act 2005. The Mental Capacity Act provides a framework for adults who lack capacity to make decisions for themselves or who have capacity currently and wish to make provisions for a time when they may lack capacity in the future. As from the 1<sup>st</sup> October 2007 Lasting Powers of Attorney (LPAs) replaced EPAs. There will be a choice of two types both of which have to be registered with The Office of the Public Guardian before use.

The two types of LPA are as follows:-

- The first relates to property and affairs and the Donor (i.e. the person who gives the power) will be required to appoint an Attorney or Attorneys to deal with his/her finance and property. The form is detailed and approximately 25 pages long. He/she will need all personal financial information to hand before attempting to complete the form.
- The second relates to personal welfare and the Donor will be required to appoint an Attorney or Attorneys who will make decisions relating to health and personal welfare. This will include medical treatment, decisions about where he/she should live and whether consent should be given or withheld for treatment.

You can select one or both of the Lasting Powers of Attorney.

Both of the forms are divided into three parts – Part A is the Donor's Statement, Part B is the Certificate Provider's Statement and Part C is the Attorney's Statement.

Part A, the Donor's Statement, includes the Donor's personal details.

Part B, the Certificate Provider's Statement, must be completed by an independent third party after he or she has discussed the contents of the LPA with the Donor

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without, if possible, anyone else present. The Certificate Provider must confirm that in his or her opinion the Donor understands the purpose and extent of the LPA and that there is nothing to prevent the LPA being created including undue pressure or fraud from a third party. It is advisable to ask your GP to complete Part B if there is any possibility that your capacity could be challenged.

Finally, Part C, the Attorney's Statement, is completed by the Attorney stating that he or she understands the duties and obligations.

The forms are complicated and if errors are made the Donor's wishes may not be reflected should he or she become incapacitated. We would strongly suggest that professional legal advice is taken if an LPA is required.

As LPAs were recently introduced it is uncertain how much Solicitors will charge for dealing with the work involved but expect to pay £300 - £500 plus VAT and court fees for registration if the Powers are to be used straightaway. Any legal fees relating to the LPA and the preparation of the forms will be in addition to the court fee.

Once the LPA has been registered, all of the information in the forms including bank details will be information in the public domain.

Please note that information which we provide is in outline for information or educational purposes only. The information is not a substitute for the professional judgment of a Solicitor, Accountant or other professional adviser. We cannot guarantee that information provided by us will meet your individual needs, as this will very much depend on your individual circumstances. You should therefore use the information only as a starting point for your enquiries, not rely on it.

**END**

Last updated: 28<sup>th</sup> September, 2009