

Castle Court Consulting – Brief Guide to LPA and LPW's

The legislation surrounding Enduring Power of Attorneys (EPA) changed in the last quarter of 2007.

Previously you would set up an Enduring Power of Attorney allowing your appointed representatives to manage your financial affairs on your behalf should this be required. Should you lose mental capacity the Enduring Power of Attorney was then registered with the Office of the Public Guardian to enable your attorneys to continue to manage your financial affairs.

The Enduring Power of Attorney whilst being a useful document also had its limitations and hence the change in the legislation.

We now have two documents. There is a Lasting Power of Attorney (LPA) for property and affairs and a Lasting Power for Personal Welfare (LPW).

The LPA will work in exactly the same way as the Enduring Power of Attorney except for the fact that it must be registered with the Office of the Public Guardian as soon as it has been set up if you want to activate it straightaway.

Once the LPA has been registered your attorneys can manage your finances provided they do so always with your best interests as their primary objective.

On the other hand the LPW can only be used once an individual has lost mental capacity and it can't be registered with the court until then. This means that whilst you can pass your financial affairs to your attorney when you wish to you will retain control of your welfare needs until such time as your mental capacity prohibits you from doing so.

The LPW is designed to enable you to pass on your wishes with regards to the type of care you wish to receive even though you are no longer capable of making those decisions for yourself.

Even if both types of attorneys are in force your appointed attorneys still need to take into account your own wishes should you be able to express them.

The two new deeds have to be constructed in a prescribed manner in format laid down by the court which includes a certificate that must be signed by an independent person chosen by the individual creating the power of attorney.

This independent third party signing the certificate must be suitably qualified such as a doctor, a solicitor or registered social worker or someone who has known you for at least two years provided they have no connection to you and are also not going to be party to the LPA or LPW.

The role of this third party is to confirm two things. Firstly, that in their opinion you are making the Lasting Power of Attorney out of your own free will and secondly, that you understand both the Lasting Power of Attorney's purpose and the powers that you are giving to your attorneys.

Primarily, because of this requirement of a third-party signature, it is preferable to have these documents drawn up by a solicitor rather than using the "do it yourself" option which is open to individuals by using the forms and documents available to them on the Public Guardian's website.

Typically it would cost around £800 to £1,000 in solicitor's fees to create the documents and have them properly signed and registered.