

As our Private Client team have now begun to see clients face-to-face at our Coalville office, they would like to raise awareness around the uses and benefits of Lasting Powers of Attorney; crucial lifetime documents which allow somebody to assist you in managing your financial assets and voicing your opinions regarding your health and welfare.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney allows you (the 'donor') to delegate authority, to a trusted friend or family member, to make decisions on your behalf. This individual is called your 'attorney'. There are two types of Lasting Powers of Attorney:

Property and Financial

This enables your attorney to make decisions about your money and property, including decisions such as managing a bank account, paying bills, collecting benefits or a pension, and buying or selling property.

Health and Welfare

This enables your attorney to make decisions about your social and health care, including decisions regarding your medical care (such as giving or refusing consent to life-sustaining treatment), or moving into a care home. Without this type of Lasting Power of Attorney your family will be consulted about any health care decisions, but the ultimate decision will likely be made by a doctor.

Who can make a Lasting Power of Attorney?

To be able to make a Lasting Power of Attorney you:

- must be aged over 18 years old; and
- have the necessary mental capacity.
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When are you deemed to have mental capacity?

In essence, you are deemed to have mental capacity if you have the ability to make your own decisions.

Who should you appoint as your attorney?

Most importantly, you should appoint someone that you trust to make decisions in your best interest. An attorney can be a family member, or a trusted friend.

How many attorneys are you permitted to appoint?

You can appoint as many attorneys as you want. At Mander Cruickshank Solicitors, we advise you to appoint at least two attorneys. This is so that, in the event that one attorney is unable to act, the document does not become unusable.

If you only want to appoint one attorney, we would recommend you appoint a replacement attorney, to step into the role, should your first attorney be unable or unwilling to act.

How does an attorney make decisions?

If you only appoint one attorney, they have the authority to make all of the decisions. Where two or more attorneys are appointed, the attorneys can either make decisions:

Jointly

Your attorneys must agree on all decisions which are made.

Jointly and Severally

Your attorneys can make decisions on their own or alongside the other attorneys.

This is the donor's decision and is made when preparing the documents. We recommend allowing your attorneys to make decisions jointly and severally, in case a decision is required urgently and one of your attorneys is unavailable.

How long does the Lasting Power of Attorney last for?

Once your Lasting Power of Attorney is registered with the Office of Public Guardian your attorney(s) retain their authority until your death.

When can an attorney make decisions?

Once your Lasting Power of Attorney is registered with the Office of Public, you are still able to make your own decisions.

Property and Financial Power of Attorney

Your attorney can either use their power as soon as the Lasting Power of Attorney is registered (but only with your permission), or only if you were to lose mental capacity.

Health and Welfare Power of Attorney

Your attorney will only be able to make decisions relating to your Health and Welfare if you have lost mental capacity.

What are the duties of an attorney?

An attorney must always act in the best interests of the donor, trying always to assist the individual to make their own decisions. However, if the donor is unable to make their own decisions, an attorney should have regard for the donors wishes, as far as they can.

The Office of the Public Guardian, with whom the documents are registered, regulate the use of Lasting Powers of Attorney. An attorney who abuses their position, can be subject to criminal or civil proceedings for failure to comply with your duties.

What happens if an individual has lost capacity?

If are deemed to have lost mental capacity, you are unable to make a Lasting Power of Attorney. Instead, an application must be made to the Court of Protection for somebody to be appointed as your 'Deputy'. This process is more time consuming than a Lasting Power of Attorney and is also more cumbersome for the Deputy, when they are appointed.

If you find yourself in this position, please contact our team, who are able to advise and assist you in making a **Deputyship application**.

What do we do at Mander Cruickshank when creating a Lasting Power of Attorney?

From the outset our aim is to make the process as clear and easy as possible.

At the initial meeting our Solicitors are able to answer any of your queries, whilst taking your instructions in relation to either (or both) of the Lasting Power(s) of Attorney that you would like to make. Following this meeting, draft Lasting Power(s) of Attorney are sent to you for review.

Once you have had chance to review the draft document(s), a further appointment is arranged for you to attend our offices. At that meeting any questions can be answered and the necessary parts of the documents can be signed by you, as the donor.

After this the work is all ours! We will send the necessary parts of the document to your attorney(s) for them to sign.

Once your attorney(s) have signed their pages, we will send the completed application to the Office of Public Guardian for registration.

Registration can take anywhere between 6 and 12 weeks – we will keep you updated on your application progresses.

Once your application is registered, we will send three certified copies of your Lasting Power(s) of Attorney to you, for your use, and retain the original in our firms' strong room.

If you have any queries or would like to arrange an appointment to discuss Lasting Power(s) of Attorney further, please contact our Coalville Office on 01530 51066 or email enquiries@mandersol.co.uk.