

Myths about Lasting Power of Attorney

by Clare Lawson of Ellis Jones Solicitors



There is a common misconception that Lasting Powers of Attorney (LPAs) are only designed for the very elderly. Certainly many LPAs are made because people are concerned about the onset of dementia and wish to put measures in place so that a friend or loved one can act on their behalf if the need arises but there are many more times when an LPA is needed.

Can we not just wait until they are necessary?

The answer is no! You don't know when it will become necessary! You just don't know what's around the corner. It is important to make an LPA now, whilst you are able, to protect yourself in such a situation. There are two types of LPA – one to deal with your property and finances and another to deal with your health and welfare. A registered LPA provides a sort of insurance for life's unexpected problems. For example if you have:-

- A new spouse and children from a previous marriage. You may wish to appoint an Attorney to act on your behalf so that there is no confusion over who is your next of kin.
- A cohabitee – your partner will not have the legal authority to make decisions on your behalf or deal with your finances. You may not be able to sell property jointly owned without both signatures.
- No clear next of kin or close next of kin.
- An unexpected illness - around 38,000 strokes occur in the UK every year in people under the age of 65. Most will make a good recovery but in the interim period it would be helpful for someone to sign documents on your behalf or consent to treatment.
- A long-term illness - It can be difficult to stay on top of your finances whilst you are seriously unwell and have only limited access to your paperwork, phone etc. If you have difficulty communicating verbally, an Attorney can advise your doctors as to your feelings about medication and resuscitation.
- A motor or sporting accident can make it difficult to physically get to the bank or sign papers.
- A long period travelling abroad is another sensible reason, so that a family member can sign documents.

It's important to consider the practical effects of not putting such measures in place.

Joint bank account misconceptions

Even if you hold a bank account in joint names with a loved one you might face problems with accessing cash. The British Banking Association says that banks in England and Wales should use their discretion to protect incapacitated joint owners. They are entitled to freeze the account, for all but "essential" transactions until they receive either a copy of a registered LPA, registered Enduring Power of Attorney or an Order from the Court of Protection appointing a Deputy to act on your partner's behalf.

If you are appointed as your partner's Attorney you are able to run the account as normal because under an LPA you are obligated to act in their best interests when you are dealing with their finances.

However if your partner had not made and registered an LPA before their stroke, for example, then the only alternative is to apply for an Order for Deputyship. This can take several stressful months to process and further delays can be caused if there is a disagreement within the family as to whom should act as Deputy. If you instruct solicitors to act on your behalf the legal fees can be very expensive.

Act now

You can only put an LPA in place whilst you are deemed to have sufficient mental capacity to authorise the application.

The best plan is not to put these things off! A Private Client lawyer can advise you on how to put an LPA in place and address any concerns you might have. At Ellis Jones we have a "Four Step Process" to guide you through making an LPA, from taking your instructions to registering the LPA so it's ready for use.

Ellis Jones has a number of offices in Bournemouth, Canford Cliffs, Ringwood and Swanage.

For more information call 01202 709898

