



# WHITE COLLAR

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## **LASTING POWERS OF ATTORNEY**

### **Don't run the risk of the worst happening without one.**

Everyone should consider the benefits of making a Lasting Power of Attorney (LPA) no matter how old they are in case anything happens to them in the future. The fact is that nobody knows what is round the corner. An LPA should be viewed as insurance against the worst happening. You would certainly not take the risk of not insuring your home, so why run the risk having no one to deal with your affairs if you become incapacitated.

### **The difference between an LPA and a Will**

Very often people mistakenly believe that because they have made a Will, the executors that have been appointed under that document have the authority to deal with their general affairs come what may. They very often fail to realise that a Will only comes into effect on death and that if anything happens to them during their lifetime and they lose capacity, for example, through illness or as a result of an accident, no one has the authority to deal with their affairs whilst they are still alive, unless they have made an LPA.

An LPA is a legal document (created under the Mental Capacity Act 2005) that anyone (called a Donor) can complete to appoint persons (known as attorneys) who can act on behalf of the Donor if the Donor is unable to deal with his/her affairs through being incapacitated. Under an LPA the attorneys have the authority to help the Donor make decisions with regard to the Donor's affairs whilst the Donor is still able to make some kind of decision and will act in the Donor's best interest if the Donor completely lacks capacity.

### **Types of LPA**

There are two types of LPA's. There is a property and financial affairs LPA which gives the attorneys authority to deal with the Donor's property and finances, for example the attorneys will be able to deal with the Donor's bank accounts, investments and the Donor's home. The other type of LPA deals with health and welfare issues and allows the attorneys to make medical and care decisions on the Donor's behalf, but this type of LPA only applies when the Donor lacks mental capacity to do so him/herself. This could also extend, if the Donor wishes, to giving or refusing consent to the continuation of life-sustaining treatment.

### **Appointment of Attorney(s)**

A Donor can appoint anyone to act as their attorney(s), but it is normal to appoint family members. It is important that the Donor trusts the people he/she is appointment as attorneys,

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since the attorneys are given wide powers with regards to the Donor's affairs. Appointment more than one attorney ensures that the LPA can continue to be used even if one of the attorneys is no longer able to act. This can be done by appointing two or more attorneys from the start on a "joint and several" basis or by appointment a replacement attorney.

### **What if you don't have an LPA?**

If you have not made a LPA and you lose capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf.

Making a LPA gives you peace of mind and ensures that your best interests are looked after.

If you have any already made an Enduring Power of Attorney prior to 1<sup>st</sup> October 2007, this will still be legal but only in respect of your property and affairs. If you wish to give authority over your treatment and care you will need to make a health and welfare LPA.

### **Costs**

White Collar can prepare both types of LPA for you. Each LPA will cost £135.00 to prepare.

Once the relevant forms are completed, a fee of £110 is payable to the Court of Protection for the registration of each LPA.

If you receive certain benefits or are on a low income, you can apply to the Court for help with the cost of registering the LPA.

**Philip Nam** F.Inst.Pa

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