

# LEGAL BULLETIN

## A practical guide to Lasting Powers of Attorney

Since 2007, when the Mental Capacity Act 2005 came into force, Lasting Powers of Attorney (LPAs) have taken the place of Enduring Powers of Attorney. A power of attorney allows someone else to make decisions on your behalf if you lack the capacity to do so yourself. When setting up an LPA, you must nominate at least one attorney, but you can have more if you wish. You can also appoint a replacement if your original choice of attorney is no longer able to act on your behalf.

For instance, if, when the LPA was first registered, you appointed a sibling as attorney, you might later wish to appoint your grown-up children to act on your behalf in the event of the death of your brother or sister.

LPAs may be set up to allow your designated attorney(s) to take decisions on your behalf in matters of property and financial affairs or in matters relating to your health and personal welfare. For instance, you might want someone to manage your bank account on your behalf, or to appoint someone who understands your wishes in regard to your health treatment.

Various safeguards are built into the system to prevent anyone being forced into an LPA against their wishes. An independent person must act as a 'certificate provider'. This person must either have known the person making the LPA for at least two years or be a professional, such as a solicitor, doctor or social worker, and they must sign the

application forms to verify that the person making the LPA has not been pressured into taking out the application.

An LPA may only be used if and when the person who made it is no longer able to act or lacks the capacity to make decisions for him/herself.

More and more people are registering LPAs, this sort of forward planning is just as important as the planning you do when making your will as the costs of dealing with a person's affairs can be very substantial if an LPA is not in place.

***Please contact us if you are worried about how your affairs will be dealt with in the future. We can help you decide the best course of action.***

***During January and February 2014, we are offering a 10% discount to our clients on our legal fees for all Lasting Powers of Attorney.***

## D.I.Y divorce form filling sessions

For £99+VAT we will guide you through the various forms and help you fill them in so that they are completed in the way required by the Courts. That way your proceedings won't be delayed by incomplete or inaccurate paperwork.

The session includes a step by step guide to the divorce procedure, the required forms for you to complete, help to complete the forms with your personal information and a copy of the completed forms for you keep for your own records.

***(This service does not include giving Legal Advice which is available separately).***

Our first session is **TUESDAY 26TH NOVEMBER**. Spaces are limited, so to make sure you get the personal attention you need, spaces need to be booked in advance.

Please call Sarah Curbishley on 01606 48777 or contact her via her e-mail on: [sarahcurbishley@susanhwarthsolicitors.co.uk](mailto:sarahcurbishley@susanhwarthsolicitors.co.uk) to book a session, find out when our next session is being held, or to ask any questions about these sessions.

***Alternatively, for clients who would prefer a solicitor to deal with the divorce, we offer fixed fees for Petitioners at £500 plus VAT and disbursements or £250 plus VAT and disbursements if you are in receipt of means tested benefits.***



## Avoiding will disputes

It is common for couples to make what are called 'mirror wills' – in which both wills contain essentially the same clauses. These wills are often in the form of 'all to other', whereby the whole of the estate of the first to die passes to the survivor. Sometimes, such wills also contain specific legacies, with the remainder of the estate passing to the surviving partner.

Normally, there are no complications. However, the creation of a mirror will does not bind the survivor in any way. Issues can therefore arise where the surviving partner goes on to change their will. For example, if a surviving spouse subsequently remarries and

executes a new will leaving his or her estate to their new partner, any children of the earlier marriage may be disinherited.

One solution to this problem is to create 'mutual wills'. A mutual will is one which effectively binds the survivor by creating a 'constructive trust' over all or some of the assets in the combined estates. This prevents the survivor from disposing of them differently by changing his or her will.

However, a better result can often be achieved by setting up a trust under the will, into which assets can be placed on the first death. This can be

an effective means of ensuring that assets are not dissipated and eventually pass to the appropriate beneficiaries. Trusts can also be used for Inheritance Tax mitigation.

Clearly, the best course of action depends on individual family circumstances and all the available options should be carefully considered. We can advise you on what these are and their consequences.

***During January and February 2014, we are offering a 10% discount to our client's on our legal fees for all Wills. Further for our conveyancing clients the discount will be 30%\*.***

## Conveyancing

In recent months it has been reported in the press that the property market is starting to pick up and property prices are slowly increasing. This can only be viewed as positive for home owners and in response to this we are offering all clients who we represent on sales or purchases of a property,

***a 30% discount on our legal fees for Wills\* during January and February 2014*** as long as we are instructed on the Will within 28 days of completing the conveyancing transaction.

## Wills and the younger age group

Mention of the word "Will" can often conjure up images of old age – after all, if you are still young, why would you want to think of such an "unattractive" and gloomy subject? The answer is, that there are very good reasons for making a Will even if you are still young (perhaps in your thirties or even twenties).

Wills are not just for the over 50s. Many younger people have families, assets and businesses and they need to be aware of the consequences of failing to plan for the future by writing a Will.

As much as 60% of the adult population of England and Wales do not have a Will; it is not alarmist to suggest that such people are storing up potential problems for their families and business associates – it is common sense to make a Will.

There are many commonly held misconceptions about inheritance; for example, it is widely believed that a widow or widower will automatically inherit their spouse's assets even if no Will was made. This is incorrect if there are children and if the Estate is worth more than £250,000 – in that case, the surviving spouse may only have an immediate entitlement to £250,000 – in the case of a large Estate that can have a big impact on the lifestyle of the survivor.

Many people are unaware that if they are unmarried but in a relationship their partner may well have no entitlement to inherit anything if they are bereaved and can in some cases even end up homeless.

The increasing number of second and third marriages causes further complications where no Will has been made; children of a previous marriage could easily end up being effectively disinherited if some time is not given up to planning a Will.

These are a handful of examples of the potential pitfalls of failing to make a Will.

If you take the plunge and engage our assistance in advising you on a suitable Will we believe you will gain some peace of mind and be surprised at how simple and undemanding the process can be, in the right hands.

***Please contact Hugh Lewis-Morgan or Karen Barlow for more information and a no obligation quote.***



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