

Lasting powers of attorney

Lasting Powers of Attorney have been with us for over a year and it seems appropriate to review the use and effect of these Powers.

There may come a time when, because you are incapable of managing your property and financial affairs or personal welfare, you will need someone to do this for you. A Lasting Power of Attorney (LPA) is a legal document that allows you to appoint a relative, professional or friend that you trust to act on your behalf.

There are two types of Lasting Power of Attorney: a Property and Affairs LPA and a Personal Welfare LPA. The Property and Affairs LPA provides that the attorney appointed may deal with the financial assets of the donor and the Personal Welfare LPA allows the attorney to make personal welfare and healthcare decisions for the donor. There are no joint LPAs, each person must have their own LPA; and the Property and Affairs LPA and the Personal Welfare LPA have to be two separate documents.

Both types of LPA appoint attorneys chosen by the donor who may take on significant responsibility for the donor's affairs and both LPAs must be registered before they can be used. Registration is through the Office of the Public Guardian (OPG) and there is a fee for each LPA registered. In addition the Personal Welfare LPA will only be effective for decisions the donor does not have mental capacity to make for himself. Once registered, the Property

and Affairs LPA can be used whether or not the donor has lost mental capacity.

If you decide to make an LPA you can choose more than one attorney and should consider who you feel you can trust to act in your best interests. If you choose more than one attorney you decide whether they must always act together or whether they may act independently. You may place restrictions or conditions on what your attorney may do or give them guidance.

The LPA must be signed by a Certificate Provider who certifies that the donor understands the LPA and that the Donor is not under any pressure to make it. The Certificate Provider is an independent person who has known the donor for over two years or is a professional person. Also the donor may also choose up to five people who will be notified when the LPA is registered and who may object to the registration if they feel it is inappropriate.

Once the Property and Affairs LPA has been registered the attorney has a duty to act in the best interests of the donor and must follow the principles of the Mental Capacity Act 2005. There is a Code of Practice to assist attorneys in their role.

Both types of LPA can be revoked but only if the donor has mental capacity to do so and notification must be sent to the OPG.



Bankruptcy of the attorney will revoke a Property and Affairs LPA but not a Personal Welfare LPA.

None of us know what the future holds. If you do not appoint someone to handle your day-to-day affairs, in the event that you are unable to do so yourself and later require this help, a deputy (either a relative or a professional person) has to be appointed by the Court of Protection. This process can take time and cause unnecessary delays and problems for your family if they need to do things on your behalf but have no power to act and is quite costly.

Enduring Powers of Attorney made before October 2007 remain valid and effective as before, and only need to be registered if the donor is losing or has lost their mental capacity.

If you would like to discuss the options available regarding the arrangements you can make to allow your affairs to be managed in the event of your incapacity, contact us soon.

Probate



When someone dies their Executor or Personal Representative will need to deal with estate matters by collecting in the assets, paying the debts and distributing the estate according to the Will or under the Rules of Intestacy where there is no Will.

If you seek professional help in this regard there are various options available to you. Historically it was always the case that the solicitors who made the Will would be instructed to deal with estate matters but over recent years numerous unregulated probate firms have come onto the market.

Those firms will give you a fixed fee quotation but hidden in their terms and agreements is a statement which is mostly overlooked by clients in that those firms do not pay interest on monies held by them during the administration of the estate. Although interest rates have recently fallen one unhappy client who consulted us last year calculated that he had in fact lost almost £20,000 in interest payments as the firm had been holding

onto £400,000 in their client account. Unlike Solicitors, because these firms are not regulated by the Solicitors Regulatory Authority they are not obliged to pay out the interest.

Another complaint received by us was that those firms also take a considerable amount of time to deal with the estate and in particular they do not settle the estate debts until the very end of the administration. This practice would seem to be in their best interests because the longer they hang on to your money, the more interest they make for themselves!

These firms lure in the unwary with horror stories of solicitors charging horrendous fees and we want to allay any fears in this regard.

We pride ourselves on providing the highest level of service and our probate lawyers have a wealth of experience in dealing with all aspects of Wills and administration of estates. Our charges are based on a work done/time spent basis at an hourly charge. We always do our best to give an accurate estimate of the likely charges and we give regular updates as to costs and progress of the matter.

If you would like to make a Will, review an existing Will, need assistance with a Probate or have any other queries relating to estate planning and Lasting Powers of Attorney, please telephone us and we will be happy to advise you.

Further prestigious award for Moss Solicitors

Moss Solicitors LLP were delighted to celebrate the success of their rising star **Carla Riozzi**, who gained the coveted award of **Leicestershire Law Society Young Solicitor of the Year 2009**, at a ceremony and Casino Royale themed Dinner held at Athena, Leicester on Friday 20 March. The award highlights Moss' specialism in criminal law and raises the firm's profile both locally and internationally. Carla was praised for her successful work overseas, looking after the interests of British citizens imprisoned abroad and her passion and commitment for the protection and furtherance of human rights.

This latest award adds to Moss Solicitors' success last year when it was awarded the accolade of County Firm of the Year for its contribution, understanding and commitment to its locality and its strong service and consistent excellence both locally and in the East Midlands.

New Solicitor

We are delighted to introduce you to our new private client solicitor, **Katrina Greenwell**.

Katrina is a qualified solicitor who recently joined Moss to replace Michael Wills who retired after 49 years with us. Katrina moved from a firm in Leicester city centre and is an experienced wills, trust and probate practitioner. She joins our busy private client team and is able to advise on wills and probate, trusts, tax and powers of attorney.



MOSS
S O L I C I T O R S

80 -81 Woodgate, Loughborough, Leicestershire, LE11 2XE
Tel: 01509 217770 **fax:** 01509 233698
Email: enquiries@moss-solicitors.co.uk
web: www.moss-solicitors.co.uk

This firm is regulated by the Law Society. A list of members is available for inspection at the above address. Moss Solicitors LLP is a Limited Liability Partnership. Registered in England Number OC307297

WOODGATE
F I N A N C I A L P L A N N I N G L T D

an associated business of Moss Solicitors

80 -81 Woodgate, Loughborough, Leicestershire, LE11 2XE
Tel: 01509 635467 **fax:** 01509 233698
Email: enquiries@woodgatefs.co.uk
web: www.woodgatefs.co.uk

Woodgate Financial Planning is an appointed representative of Chesterton House Financial Planning Ltd, and is authorised and regulated by the Financial Services Authority. Registration No. 4662503 (ENGLAND).

THE INFORMATION CONTAINED IN THIS NEWSLETTER IS INTENDED FOR GENERAL GUIDANCE ONLY. IT PROVIDES USEFUL INFORMATION IN A CONCISE FORM AND IS NOT A SUBSTITUTE FOR OBTAINING LEGAL OR FINANCIAL ADVICE. IF YOU WOULD LIKE ADVICE SPECIFIC TO YOUR CIRCUMSTANCES, PLEASE CONTACT US.