



# Which LPA?

## Lasting Powers of Attorney

A Lasting Power of Attorney allows you to plan ahead by choosing one or more persons you trust, (your Attorneys), to make decisions and take appropriate actions on your behalf regarding your health & welfare and / or your property & financial affairs should there come a time when you lack mental capacity to do so for yourself.

Outlined below are the benefits of each LPA, alongside the reasons why each are important:

### Health & Welfare Lasting Power of Attorney

Health & Welfare LPA's are important because:

- » Relatives are not automatically entitled to make health & welfare decisions if a loved one lacks mental capacity.
- » The court of protection grant less than 10% of deputyship applications. (*A Deputy is a person appointed by the Court of Protection to manage the personal welfare or the property and affairs of another person, who lacks the mental capacity to manage them themselves*)
- » They are pretty much essential given the difficulty in drafting valid and applicable advance decisions to refuse treatment. (many doctors override an advance directive)
- » Provides the family with input into care for their loved ones at the end.
- » Other professions such as dentists may refuse to give treatment as they haven't got an authority for the person who lacks capacity.

It is a common misconception that this type of Lasting Power of Attorney is not essential because a person's next of kin will be able to act on their behalf. This is incorrect. The term 'next of kin' is not recognised by the law and thus has no legal status. Your next of kin does not have legal authority to consent on your behalf or manage your affairs unless you have appointed them to act as your attorney under a Lasting Power of Attorney.

Dementia and Alzheimer's are progressive diseases, and thus the people that suffer from them will eventually develop and experience complicated health problems. It is therefore important that you have a Lasting Power of Attorney for Health and Welfare in place so the person you trust has the authority to make decisions on your behalf. The NHS can appoint a person called an Independent Mental Capacity Advocate (IMCA) to act on behalf of a person who lacks mental capacity and who is facing important decisions made by the NHS and Social Services about serious mental treatment and changes of residence. Although the family are entitled to be involved in this process they will not have the same level of authority that they would have if they were appointed as an attorney.

Health and Welfare LPA's cover aspects such as:

- » Deciding where the donor is to live.
- » Deciding what contact, if any the donor is to have with certain other people.
- » The donors day to day care, including diet and clothing.
- » Assessments for and provision of community care services Access to personal information about the donor.
- » Life sustaining treatment.
- » Moving into a care home.



## Property & Financial Affairs Lasting Power of Attorney

Property & Financial Affairs LPA's are important because:

- » To enable your affairs to be looked after by someone else
- » The court of protection grant less than 10% of deputyship applications

Property & Financial Affairs LPA's cover aspects such as:

- » Buying and selling of property,
- » Banks, buildings society and other financial accounts
- » Dealing with tax affairs
- » Welfare benefits and tax credits
- » Debts
- » Legal proceedings
- » Insuring, maintaining and repairing our property
- » Paying a mortgage, rent and other household expenses
- » Paying fees for private medical care, residential care or nursing home ( *but remember that decisions about care are covered by a Health and Welfare Lasting Power of Attorney*)

Lasting Powers of Attorney can be created individually, although Gemini recommend that both LPA's are created at the same time to ensure that all potential eventualities are covered in the event of any loss of mental capacity. LPA's are for individuals, although a couple can often chose to draft their LPA's at the same time, for additional peace of mind.

A Lasting Power of Attorney can be created at any time. This does not mean that the donor immediately foregoes the right to carry on dealing with their own affairs. They can go on doing this for as long as they are able to, or wish to do so. The important thing is that the Lasting Power of Attorney is ready to use in the future, should the donor become mentally incapable or feel they can no longer cope with managing things themselves.

A mentally capable donor can cancel a Lasting Power of Attorney at any time.

*The information contained in this factsheet is based on our understanding of the working of the Court of Protection and the Office of the Public Guardian.*