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If you found yourself in a situation through physical or mental incapacity where you were unable to make decisions or manage your affairs who would you want to act in your best interests? You can address this in advance by putting in place lasting powers of attorney (LPA).

LPAs are powerful documents and it is important to seek advice from a solicitor to ensure they are valid, effective and on terms that are appropriate to your circumstances. They endure beyond the loss of your mental capacity so the person(s) you appoint can continue to act on your behalf even when you are no longer capable of managing your affairs.

Under the current law, there are two types of LPA. One enables you to give your attorney(s) the power to make decisions about your money and property, for example managing your bank and building society accounts, paying your bills, collecting your benefits or selling your home. This is called a property and financial affairs LPA.

The other enables your attorney(s) to make more personal decisions about your health and welfare, for example, your medical care, where you should live, or whether to give or refuse consent to life sustaining treatment. This is called a health and welfare LPA.

Why should you consider making an LPA for property and financial affairs?

Physical or mental incapacity can occur at any time through unexpected illness or accident, so you do not need to be elderly to consider making an LPA.

Creating an LPA gives you peace of mind that your affairs can be taken care of by those you have chosen on terms set by you.

If you do not have an LPA in place in such circumstances, someone would need to apply to the Court of Protection to be appointed as your 'deputy'. The Deputyship process can be costly, time-consuming and stressful and means that you have lost the right to choose who will have the responsibility of looking after your affairs.

Your LPA for property and financial affairs can be operable as soon as it has been registered, even while you have mental capacity. This may be useful if you go abroad or undergo an operation or simply wish to delegate certain matters to your attorney(s) who can act with your consent and at your instruction.

Why should you consider making an LPA for health and welfare?

If you lose your mental capacity, decisions may need to be made about your medical or general care and living arrangements.

Social Services and other organisations may become involved and, although your immediate family may be consulted in such circumstances, more formal authority could be required to make some decisions for you. A legally appointed health and welfare attorney would have this authority, subject to any restrictions you may have placed in the LPA.

It is rare for the Court of Protection to appoint a deputy for health and welfare because it is often not appropriate to give a third party ongoing authority in relation to health and welfare issues. The court is more likely to make a one-off order deciding a particular health and welfare issue meaning further applications may become necessary as subsequent issues arise.

For more information please contact our Private Client team or visit our website – www.machins.co.uk

