A E Thomson Ltd

Independent Financial Advisers

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GUIDE TO

LASTING POWER OF ATTORNEY

Giving someone you trust the authority to help you make decisions

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As someone becomes more unwell, they're likely to find it more difficult to manage money and financial affairs, and may become too unwell to make decisions about health and care. A Lasting Power of Attorney (LPA) is a legal document in which someone (the donor) gives another person (the attorney) the right to help them make decisions, or take decisions on their behalf.

An LPA is a completely separate legal document to your Will, although many people put them in place at the same time as getting their Will written as part of wanting to plan for the future. Many people find it reassuring to know that someone they trust will be able to make decisions on their behalf if they become too unwell.

During your lifetime

Once you have an LPA in place, you can have peace of mind that there is someone you trust to look after your affairs if you became unable to do so yourself during your lifetime. This may occur, for example, because of an illness, old age or an accident.

Having an LPA in place can allow your attorney to have authority to deal with your finances and property as well as make decisions about your health and welfare. Your LPA can include binding instructions together with general preferences for your attorney to consider. Your LPA should reflect your particular wishes so you know that the things that matter most would be taken care of.

Required legal capacity

You can only put an LPA in place while you are capable of understanding the nature and effect of the document, for example, you have the required legal capacity. After this point, you cannot enter into a LPA and no one can do so on your behalf.

Many people don't know that their next of kin has no automatic legal right to manage their spouse's affairs without an LPA in place, so having to make decisions on their behalf can become prolonged and significantly more expensive.

In England and Wales there are two types of Lasting Power of Attorney.

Lasting Power of Attorney for Health and Welfare can generally make decisions about matters including:

- where you should live
- your medical care
- what you should eat
- whom you should have contact with
- what kind of social activities you should take part in

You can also give special permission for your attorney to make decisions about life-saving treatment.

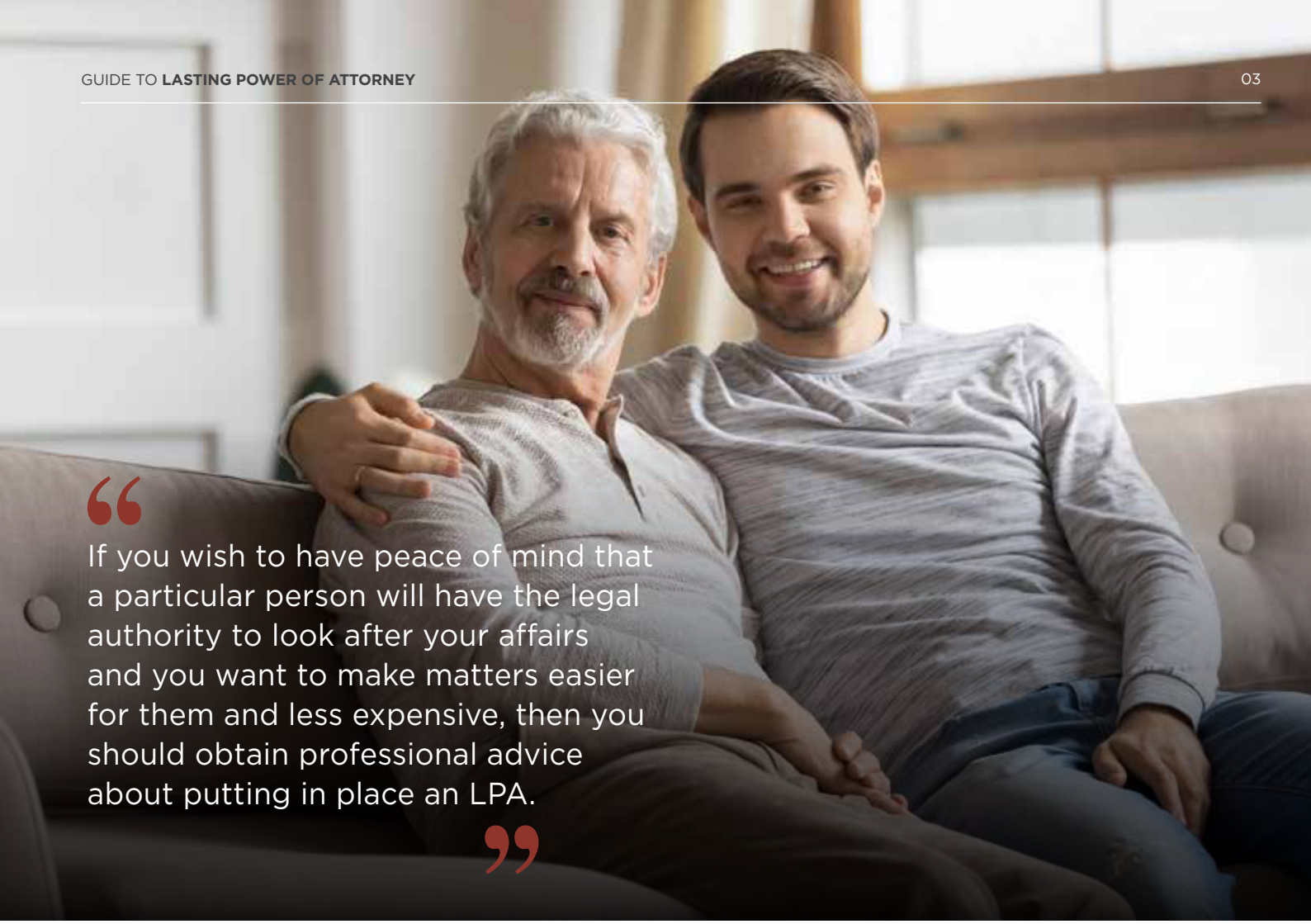
Lasting Power of Attorney for Property and Financial Affairs decisions can cover:

- buying and selling property
- paying the mortgage
- investing money
- paying bills
- arranging repairs to property

Manage your affairs

Without an LPA in place there is no one with the legal authority to manage your affairs, for example, to access bank accounts or investments in your name or sell your property on your behalf. Unfortunately, many people assume that their spouse, partner or children will just be able to take care of things but the reality is that simply isn't the case.

In these circumstances, in order for someone to obtain legal authority over your affairs, that person would need to apply to the Court of Protection and the Court will decide on the



> If you wish to have peace of mind that a particular person will have the legal authority to look after your affairs and you want to make matters easier for them and less expensive, then you should obtain professional advice about putting in place an LPA.

person to be appointed to manage your affairs. The person chosen is appointed your 'Deputy'. This is a very different type of appointment, which is significantly more involved and costly than being appointed attorney under an LPA.

If you wish to have peace of mind that a particular person will have the legal authority to look after your affairs and you want to make matters easier for them and less expensive, then you should obtain professional advice about putting in place an LPA.

Health and Welfare Lasting Power of Attorney

Allows you to name attorneys to make decisions about your healthcare, treatments and living arrangements if you lose the ability to make those decisions yourself. Unlike the Property and Financial Affairs LPA, this document will only ever become effective if you lack the mental capacity to make decisions for yourself.

If you can't communicate your wishes, you could end up in a care home when you may have preferred to stay in your own home. You may also receive medical treatments or be put into a nursing home that you would have refused if only you had the opportunity to express yourself; and this is when your attorney, appointed by the LPA, can speak for you.

Property and Financial Affairs Lasting Power of Attorney

Allows you to name attorneys to deal with all your property and financial assets in England and Wales. The LPA document can be restricted so it can only be used if you were to lose mental capacity, or it can be used more widely, such as if you suffer from illness, have mobility issues or if you spend time outside the UK. ■

PROTECTING YOU AND YOUR FAMILY SHOULD THE WORST HAPPEN

Do you need help managing the financial affairs or health decisions of a relative? Are you concerned that failing health may leave you incapable of managing your own finances and general wellbeing? Arranging a Lasting Power of Attorney could be used to protect you and your family should the worst happen. To find out more, please contact us.

THIS GUIDE HAS BEEN DESIGNED TO ASSIST YOU WITH SOME OF THE GENERAL ISSUES AND TO ANSWER QUESTIONS THAT YOU MAY HAVE.

THIS GUIDE IS ONLY INTENDED TO BE A GENERAL OVERVIEW OF THE LAW IN ENGLAND AND WALES IN RELATION TO LASTING POWERS OF ATTORNEY.

WHILE EVERY EFFORT HAS BEEN MADE TO ENSURE THIS GUIDE'S ACCURACY, IT DOESN'T CONSTITUTE LEGAL ADVICE. IF YOU ACT ON IT, YOU ACKNOWLEDGE THAT YOU DO SO AT YOUR OWN RISK. PROFESSIONAL LEGAL ADVICE SHOULD ALWAYS BE OBTAINED.

WANT TO DISCUSS ARRANGING A LASTING POWER OF ATTORNEY?

In general, it's better to arrange a Lasting Power of Attorney (LPA) sooner rather than later. This is because it can only be set up when someone has the mental capacity to make their own decisions.

To discuss your options, please contact us for further information – we look forward to hearing from you.

This guide is for your general information and use only, and is not intended to address your particular requirements. The content should not be relied upon in its entirety and shall not be deemed to be, or constitute, advice. Although endeavours have been made to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No individual or company should act upon such information without receiving appropriate professional advice after a thorough examination of their particular situation. We cannot accept responsibility for any loss as a result of acts or omissions taken in respect of the content. Thresholds, percentage rates and tax legislation may change in subsequent Finance Acts. Levels and bases of, and reliefs from, taxation are subject to change and their value depends on the individual circumstances of the investor. The value of your investments can go down as well as up and you may get back less than you invested. All figures relate to the 2021/22 tax year, unless otherwise stated.

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