

# Lasting Powers of Attorney

## CAN YOUR INVESTMENTS CONTINUE TO BE MANAGED?

**M**ost of our clients have a Lasting Power of Attorney (LPA). These allow trusted people you choose to make financial and care decisions on your behalf, if at some stage you don't have the mental capacity to make those decisions yourself. There has been an important change to LPAs regarding the use of discretionary investment managers by an attorney. This might affect you and your LPA.

### WHAT IS THE ISSUE?

LPAs have always been drafted with the intention that your attorney would have the power to appoint, or continue with the appointment of an investment manager in the event that you no longer have mental capacity. This was the position of the Office of Public Guardian (OPG), the Government Agency that supervises this area of the law.

They have recently issued new guidance. If your attorney needs to instruct a discretionary investment manager (or indeed continue with an existing manager) your LPA will need a specific clause in place. Despite receiving a lot of criticism this is the current position.

In this context your LPA covers your own and joint investment portfolios as well as those for ISAs and Personal Pensions (such as a SIPP). Family trusts and occupational pension schemes such as a SSAS, where trustees are in place, are not affected.

### WHAT DOES THIS MEAN TO YOU?

If your LPA does not contain specific provision then the professional management of your investments would stop until your attorneys had made a successful application to the Court of Protection. This will usually take months and is expensive.

**Your LPA is unlikely to contain the necessary permission if it was drafted before October 2015. Even if it was drafted after that it may not contain such a clause. If you don't have an LPA but still hold an older version known as an Enduring Power of Attorney (EPA) this document will not contain the necessary permissions.**

### WHAT SHOULD YOU DO?

The legal profession is challenging the guidance of the OPG but this case is unlikely to be decided within the next six months, so there is a period of uncertainty during which the OPG's latest guidance stands. Hurley Partners strongly recommends that you contact your solicitor to discuss this matter.

### THE OPTIONS APPEAR TO BE:

- Do nothing and wait until there is clarity following the challenge by the legal profession.
- Arrange for the preparation of a new financial LPA which includes a specific instruction that allows your attorneys to delegate the management of your investments.
- If you do not have an LPA or you currently have an EPA we would recommend that you contact your solicitor.

### LPA RECOMMENDED WORDING

To enable continuity of management of your investments with Hurley Partners we have approved the following wording which you should make your solicitor aware of.

*"My attorney(s) may transfer my investments into a discretionary management arrangement. Or, if I already had investments managed by a discretionary investment manager before I lost capacity to make financial decisions, I want this arrangement to continue. I understand in both cases that managers of the scheme will make investment decisions appropriate to my continuing needs and my investments will be held in their names or the names of their nominees"*

### WHAT IS AN LPA?

With the average life expectancy continuing to rise, it is increasingly important to consider lifetime planning. Taking steps to ensure your financial affairs, future healthcare and welfare needs are in order will support and guide your relatives or friends in their care for you, should you require their assistance in the future. An LPA is a legal document that lets you (the 'donor') choose trusted people (attorneys) to make these decisions on your behalf.

An LPA is mainly used if you don't have the mental capacity to make decisions yourself. You must have mental capacity to make an LPA. Mental capacity is the ability to make a specific decision at the time that it needs to be made.

The LPA must be registered with the OPG.

Your LPA is only for England and Wales. It probably won't work elsewhere and you should take further legal advice if this applies to you. There are two kinds of LPA covering two kinds of decision:

- Money, finances and property
- Health and care

This briefing is only concerned with the former.



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