

Mundays Solicitors Private Client Department

m u n d a y s

Updates to LPA Forms 1 October 2009

Following the introduction of lasting powers of attorney ("LPA") on 1st October 2007, the Ministry of Justice carried out a consultation into how the powers were working in practice between October 2008 and January 2009. With input from legal bodies including Solicitors for the Elderly ("SFE") and the Society of Trust and Estate Practitioners ("STEP"), the Office of the Public Guardian ("the OPG") has redesigned the forms with a view to making them shorter, simpler and more accessible to the general public.

Simplicity

The previous LPA forms were 24 pages long and include a huge number of options and boxes to fill in. By contrast, the forms introduced on 1 October are just 11 pages long, although certain formalities still need to be complied with when having an LPA prepared. Further, in many cases, for example if you wish to name more than one replacement attorney, additional continuation sheets will be needed.

There are 5 different types of continuation sheet for each type of LPA and which sheet is to be used will depend upon the section which needs further detail. The different types of continuation sheet could lead to confusion and when an LPA is prepared the correct sheet will need to be selected and completed in accordance with the OPG's requirements.

Types of LPAs

The two types of LPA are renamed on the new forms; the "Personal Welfare" LPA, which permits an attorney to make healthcare decisions on the donor's behalf, is now the "**Health and Welfare**" LPA, and the previous "Property and Affairs" LPA, which permits an attorney to deal with the donor's property and finances, is now the "**Property and Financial Affairs**" LPA.

Protection

A professional '**certificate provider**', who certifies that the donor has understood the form, the implications of making an LPA and has done so under no pressure, now has to specify what particular knowledge and skills qualify them to be a 'certificate provider'. Previously, this was done by simply ticking a box marked "Solicitor", "Doctor" and so on. This enhances the protection offered by a 'certificate provider' and ensures that the individual providing the certificate has the relevant skills to do so.

update

meeting legal
challenges
with solutions

mundays
solicitors

All solicitors within Munday's Private Wealth department have experience with dealing with elderly and vulnerable clients and are members of STEP and SFE.

m u n d a y s

Speed

With simpler, shorter forms, the OPG hope to be able to reduce delays in the registration of LPAs. It currently takes approximately 6-9 weeks from the date of receipt for the OPG to complete registration. Once the new forms are in use we will be able to assess whether there is a reduction in the time taken to register an LPA.

What happens to the Old Forms?

Any LPA already executed **will remain valid whether or not it has been registered** with the OPG. In addition, there is a transitional period until 31 March 2011 during which the old forms can be used, provided the LPA is executed by the donor (the person creating the LPA), but not necessarily registered, before that date.

Why use a solicitor?

Whilst the new forms are more user friendly, an LPA is still a very important document. Once registered, an LPA gives your attorney(s) power to act in relation to your affairs. It is crucial to take advice on the implications of making an LPA and to consider carefully who you want to appoint and the powers you wish to give them.

You may wish to include detailed restrictions or guidance for your attorney(s). Our solicitors are able to give you advice on the matters you might wish to consider and will be able to draft the appropriate guidance for you.

Finally, it must be remembered that if an LPA contains any errors it may be rejected upon registration. This could leave your affairs in the hands of the court rather than your intended attorney(s) should you lose capacity. This is not only impractical, time consuming and expensive, but any restrictions or guidance in your LPA will be lost.

If you have any queries please contact Mehboob Dharamsi who will be happy to arrange an appointment for you to see one of our solicitors.

October 2009

For more information please contact

Mehboob Dharamsi

Tel: 01932 590 529

E-mail: Mehboob.Dharamsi@Mundays.co.uk

This document is for general information only, it does not intend to provide legal advice. Mundays accepts no responsibility for loss which may occur from reliance on information contained in this document.

update

Mundays LLP
Cedar House
78 Portsmouth Road
Cobham
Surrey KT11 1AN

DX 36300 Esher
tel +44 (0) 1932 590500
fax +44 (0) 1932 590220
email enq@mundays.co.uk
web www.mundays.co.uk

munday's
solicitors