



A Guide to Making a Lasting Power of Attorney

You can't control what the future holds, but you can control who makes decisions on your behalf.

For life changing events

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S O L I C I T O R S

A Guide to Making a Lasting Power of Attorney (LPA)

You may have heard of a Lasting Power of Attorney (LPA) and be aware that in certain circumstances, it is advisable to make one, but what is it and why is it important? This guide sets out, in brief, the answer to these and other key questions.

1. What is a Lasting Power of Attorney?
2. What is Mental Capacity?
3. Who should make an LPA?
4. What does an LPA cover?
5. Who can be an Attorney?
6. What will my Attorneys have to do?

1. What is a Lasting Power of Attorney?

It is a legal document that you (the donor) can use to appoint an individual or individuals (your Attorneys) to manage your affairs, or to help you manage them. It gives you more control over what happens if you have difficulty making decisions and/or putting those decisions into effect, for example if:

- As a result of illness or an accident, you become mentally and/or physically incapable of dealing with certain matters, like making decisions or dealing with paperwork;
- You are living abroad for an extended period and need someone at home to manage some of your affairs whilst you are away.

In order to make an LPA, you must at the time of making it be aged 18 or over and have mental capacity. Once you have made your LPA, you need to register it with the Office of the Public Guardian, a government department which protects people in England & Wales who may not have the mental capacity to manage their own affairs.

2. What is Mental Capacity?

Mental Capacity is the ability to make a specific decision at the time it needs to be made. This means being able to:

- understand the information relevant to the decision,
- retain that information long enough to make the decision,
- to use or weigh that information as part of the process of making the decision
- to communicate the decision

3. Who should make an LPA?

Anyone aged 18 or over can make an LPA provided that they have mental capacity.

Sadly, mental incapacity can result from an accident or long-term illness and can have devastating effects for families trying to manage the health, welfare and finances of a loved one without legal authority. People often seek advice on making an LPA when they believe they might lose the ability to manage their own affairs, for example if they are diagnosed with a potentially debilitating illness, or are elderly and at risk of age-related incapacity. However, you do not need a specific reason to make an LPA – it's a good idea to plan ahead to ensure that you are in control of what happens to you in the future and who makes decisions on your behalf.

What does an LPA cover?

There are two types of LPA. **A property and financial affairs LPA** gives your Attorney the power to make decisions relating to your property and financial affairs. It can be created to suit your requirements and you can put restrictions on the powers you grant your Attorney. Your Attorneys can make a number of decisions, including:

- Managing your bank and building society accounts;
- Paying your bills;
- Managing your investments and/or making new investments on your behalf;
- Running your business;
- Selling your home or other property if necessary; and
- Dealing with your tax affairs.

Once you have made the LPA and registered it with the Office of the Public Guardian, your Attorney can, with your consent, start dealing with financial and property matters on your behalf. They do not have to wait until you have lost the capacity to manage your own affairs before assisting you if that is your wish but whilst you have mental capacity they cannot use the LPA without your permission.

A health and welfare LPA gives your Attorney the power to make decisions relating to your health and wellbeing, such as:

- Your daily routine including washing and dressing;
- Your diet, if you are unable to shop and cook for yourself;
- What type of personal care and/or medical care you receive; and
- Whether you continue living in your own home or move into a care home or nursing home.

You also have the option of giving your Attorney the power to make decisions regarding medical matters including:

- Having an operation;
- Receiving treatment for serious diseases like cancer;
- Palliative care; and
- Whether and in what circumstances life sustaining treatment for you should be refused.

Making an LPA gives you the opportunity to discuss these matters with your Attorney in advance and to let them know how you would like them to exercise their decision-making powers. Once this document is registered, your Attorney is only allowed to use their powers once you have lost the capacity to make your own decisions.

5. Who can be an Attorney?

Your Attorney must be aged 18 or over and have the mental capacity to make their own decisions. It is important you appoint someone you trust completely to act in your best interests. Often people appoint a close relative, a friend or a professional such as their solicitor or accountant. Your Attorney does not need to be a British citizen or live in the UK though for practical purposes, it may be more convenient if they are local to you.

You can appoint just one Attorney though it may be better to appoint at least two. If you do this, you need to decide if they will make decisions:

- **Together** (also known as “jointly”) – Your Attorneys must make all decisions together. They can only make decisions if they all agree, so difficulties may arise if the attorneys fall out with each other. In addition, if one were to die and your LPA made no provision for appointing a replacement, your LPA would become ineffective;
- **Separately or together** (also known as “jointly and severally”) – Your Attorneys can make decisions together or on their own. This is the most practical arrangement. If one of your attorneys were temporarily or permanently unable to act, then the remaining Attorney could continue acting by themselves;
- **Together for some decisions and separately for others** – As above, if your Attorneys cannot agree on matters that are to be decided together, this could result in no decision being taken on those matters.

- In any event, you can nominate other people to replace your Attorney(s) in the event they become permanently unable to act for you.

6. What will my Attorneys have to do?

There are laws and guidance on how your Attorneys must exercise their powers under your LPA. Your attorneys should familiarize themselves with these and ensure they act in your best interests at all times.

For further advice
or to book a
consultation, please
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