

# Lasting powers of attorney

YOUR QUESTIONS ANSWERED



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# Lasting powers of attorney – the basics



## What is a Lasting Power of Attorney?

A Lasting Power of Attorney ('LPA') is a legal document which allows you (the 'donor') to choose someone you trust (your 'attorney') to help you make decisions or to act on your behalf at a time in the future, should you become physically or mentally incapable of making your own decisions.

## Are there different types of LPA?

Yes, there are two types of LPA: one for property and financial affairs, and one for health and welfare. You can choose to make one type or both. You can have the same attorney for both, or you can have different attorneys.

## What does an LPA cover?

A Property and Financial Affairs LPA allows your attorney to make decisions on your behalf about your property and financial matters, for example paying your bills and managing bank accounts for you.

A Health and Welfare LPA gives your attorney authority for things such as making care arrangements or consenting to your medical treatment.

## What can an attorney do?

You decide how much power your attorneys may have in relation to your affairs. You may choose to give your attorneys general authority to make all your financial decisions and make all decisions regarding your health and personal care.

- For a **Property and Financial Affairs LPA**, this means your attorney could sign cheques, pay bills, open and close accounts, collect pensions and benefits, make gifts and sell your home or other assets. Your attorney must keep accounts on your finances and make sure their money is kept separate from your money.
- For a **Health and Welfare LPA**, this means your attorney could decide where you live, organise your daily washing and eating routine, what type of care you need and even

refuse or consent to medical treatment. The power to make decisions about life sustaining treatment must be expressly given to your attorney. If you haven't specifically granted that permission, then the decision will be made by health professionals.

If you do not wish your attorneys to have such wide powers, then you can place restrictions on the LPA to prevent them from making specific decisions, or include a condition that your attorneys must act in a certain way. For example, specifying that they must consult a particular person before making a decision.

## Who can make an LPA?

Anyone can make an LPA as long as they are aged 18 or over and have mental capacity (the ability to make their own decisions) to understand the meaning and the effects of the LPA.

## What is a donor?

A donor is the person making the LPA.

## What is an attorney?

An attorney is the person appointed by the donor to make decisions on the donor's behalf.

## Is an LPA different to an Enduring Power of Attorney?

Yes. Lasting Powers of Attorney were introduced in October 2007, replacing the old system of Enduring Power of Attorney (EPA). An EPA created before October 2007 remains valid; however EPAs only cover decisions about property and financial affairs. A separate Health and Welfare LPA would need to be in place for an attorney to be able to make decisions about your health and personal care.

## Does an LPA apply throughout the UK?

No. The rules governing Lasting Powers of Attorney apply in England and Wales only. There is a different process in Scotland and Northern Ireland.

# Considerations for making a lasting power of attorney



## What are the benefits of making an LPA?

Making an LPA ensures that someone you trust can make decisions on your behalf, should you become physically or mentally incapable of dealing with your finances, property or personal welfare. It brings peace of mind for you and your family. Appointing an attorney does not mean you automatically lose control; in fact it gives you more control over what happens to you in the future. You can plan in advance, make your preferences clear and place restrictions or conditions on the LPA.

## When should I appoint an attorney?

An LPA can be drawn up at any time as long as the donor (the person appointing an attorney) has the mental capacity to understand the meaning and the effect of the LPA. As long

as you are of sound mind and are over 18, you can appoint a person – or persons – you trust to look after your affairs if it becomes necessary. Once you have lost capacity, it is too late to appoint someone of your choice.

Of course, people's ability to deal with their own affairs can change unexpectedly. However, if you are considering residential care or already require care and support in the home, it may be the right time to consider making an LPA.

## Do I need an LPA if I am married?

If you are married or in a civil partnership, you may have assumed that your spouse or partner would automatically be able to deal with your bank accounts and pensions, and to make decisions about your health care, if you were to lose the ability to do so. This is not the case. Unless they are registered as your attorney, they will not have the authority to make decisions on your behalf.

## What is the alternative to having an LPA?

If you lose capacity to make decisions and there is no LPA in place, then you cannot legally give someone the power to decide for you. The alternative is a deputyship order. A relative, carer or friend could apply to the Court of Protection to be a deputy, or the Office of the Public Guardian would appoint someone to act on your behalf.\* This can be very involved and takes time, sometimes years, to arrange. In the meantime bills cannot be paid, financial and practical matters cannot be looked after and the process can be very expensive and stressful.

## Who can apply to be a deputy?

Anyone can apply to be a deputy as long as they are aged 18 or over, however the Court will want to ensure that the person is suitable. For example, they would not approve someone who has been declared bankrupt.

Usually, deputies are close relatives or friends of the person who needs help with making decisions. Deputies are rarely appointed to make decisions relating to health and welfare.

## What is the difference between Court of Protection and Office of the Public Guardian?

These are separate organisations with different defined roles who work together on behalf of people who lack the capacity to make their own decisions. Put simply, the Court of Protection makes the decisions and the Office of the Public Guardian handles the administration.

*\*Rowlington Tilley & Associates has a lot of experience in helping families apply for a deputyship order. If required, our founder Lyn Parkin can act as a professional deputy.*



# Choosing your attorney and registering your LPA



## Who can be an attorney?

You can choose anyone to be your attorney as long as the person is aged 18 or over and is capable of making decisions on your behalf. This may be a relative or friend, or a professional such as a solicitor.

The role of attorney involves a great deal of responsibility and gives someone extensive power to make decisions about your life, so it is very important that you trust the person or people you appoint to make decisions in your best interests.

## Can I appoint more than one attorney?

Yes, although this is usually no more than four people. If there is more than one, you need to be clear how they will act on your behalf.

You can appoint them to act 'jointly' which means that all your attorneys have to sign relevant documents and make decisions together. This acts as a safeguard so all of your attorneys must act in agreement.

A disadvantage is that if one of the attorneys cannot act or refuses to agree to a decision then the power to make that decision fails.

You can also appoint your attorneys to act 'jointly and severally'. This means that they can act on their own or together. This is more flexible and allows your attorneys to act independently.

## What if my attorney is no longer able to act, or becomes unwilling to take on the responsibility?

You can appoint replacement attorneys to make decisions on your behalf if your original attorney is no longer able to do so. For example, you may choose your spouse as your attorney and choose your son or daughter as a replacement if your spouse should die or becomes incapable of acting on your behalf.

Appointing a replacement attorney is done at the time you make your LPA. A replacement attorney has to agree to take on this role in the same way as any other attorney.

## Where do you register an LPA?

Once completed and signed by all parties, the LPA must be registered with the Office of the Public Guardian. The process takes 8-10 weeks. Your attorney is not authorised to make decisions on your behalf until the document is registered.

## Is there a registration fee?

Yes, there is an administration fee for registering each LPA, unless the Donor is entitled to a reduction or exception.

## When does the LPA take effect?

Unlike a will, an LPA would only come into force during your lifetime, and only if you were to lose the capacity to make decisions for yourself. For example, this could be following a stroke or injury or from a dementia-related illness such as Alzheimer's.

With your permission, a Property and Financial Affairs LPA may be used as soon as it is registered, enabling your attorney to help you make financial decisions.

A Health and Welfare LPA, however, can only be used when you are unable to make your own decisions.

Your attorney's authority to act through an LPA will automatically cease when you die.

## Can I still make decisions if my LPA is registered?

Yes, if you have the capacity to make a decision then you can instruct your attorney to act for you in your best interests.

If you disagree with your attorney's actions – or you wish to change or end your LPA after it is registered – you can revoke it by notifying the Office of the Public Guardian as long as you still have mental capacity.

## Does the LPA have to be signed by anyone else?

Yes. Your nominated attorney must sign it, plus you need to choose someone else to complete part of the form to confirm that you understand the LPA and that you are not under any pressure to make it. This person is called a certificate provider. It can be someone who has known you personally for at least two years – but not a family member – or a professional person with the relevant skills and expertise such as a doctor, solicitor or registered social worker.

## Do I have to notify anyone that I am making an LPA?

You do not have to notify anyone, however you can name up to five people to be notified if you wish. This is done as part of the LPA registration process. Many people find it reassuring to have this additional safeguard of keeping people informed.

Rowlington Tilley & Associates is an independent company providing jargon-free family inheritance and estate planning services to people living in Hertfordshire, Bedfordshire and Buckinghamshire. We specialise in protecting the interests of both elderly and incapacitated clients, helping individuals and their families make informed choices.

***Our services include:***

- Lasting Powers of Attorney ■ Court of Protection applications (Deputyship)
- Advice for Attorneys and Deputies ■ Wills ■ Estate Planning ■ Probate
- Trusts ■ Inheritance Tax Planning

If you would like to talk to us in confidence about putting an LPA in place, or any related matter, please get in touch.

Call us on **01582 469613**

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