

# Powers of Attorney Guide



We can help if you have questions about making a Power of Attorney.

None of us know what will happen in the future. However, we do have the power to put things in place so that the people we trust can look after our affairs and make our most important decisions for us if we are no longer able to.

Having a Power of Attorney means that, if at some point in the future you suddenly become ill or suffer an unexpected accident, your Attorney (or Attorneys) will be able to step in and look after everything on your behalf.

There are other reasons for having a Power of Attorney - perhaps you are going abroad and things will need to be looked after while you are away or you simply would like to take a step back from dealing with your finances in later life.

Your spouse/civil partner, partner or "next of kin" does not automatically have legal authority to deal with your financial or personal affairs, which is one of the reasons a Power of Attorney can be so useful.

In particular, a Lasting Power of Attorney can still be used in the event that someone was to lose mental capacity (meaning that they were no longer capable of making certain decisions in relation to their affairs or welfare). Putting a Lasting Power of Attorney in place can significantly ease the administrative burden on family members, especially in the event of loss.



# Introduction to Powers of Attorneys

## General Powers of Attorney

You can grant a General Power of Attorney appointing Attorney(s) to act on your behalf in relation to a specific matter or regarding your overall financial affairs. However, if you lose mental capacity the General Power will be automatically revoked and your Attorneys will no longer be able to act for you.

This kind of Power of Attorney is therefore mostly used for a temporary period. For example, if you would like someone you trust to look after your finances whilst you are abroad for an extended time.

An Enduring power of Attorney (EPA) or Lasting Power of Attorney (LPA) will not be revoked if you lose mental capacity.

## Enduring Powers of Attorney

Until 30th September 2007 it was possible to appoint an Attorney under an Enduring Power of Attorney (EPA), and if you already have an EPA in place it may still be valid. Unlike a Lasting Power of Attorney (LPA), an EPA must be registered with the Office of the Public Guardian

(OPG) only if the person who has appointed the Attorney has already lost mental capacity or is becoming mentally incapable of managing their own affairs. An EPA does not cover Health and Welfare decisions.

If the person who made the EPA no longer has mental capacity to deal with their financial affairs, the Attorney(s) can only act in an extremely limited capacity until the EPA has been registered with the OPG.

## Lasting Powers of Attorney

Lasting Powers of Attorney have taken the place of the old-style Enduring Powers of Attorney, as referred to above. Although a valid EPA can still be used, it is no longer possible to make one.

When making an LPA, you can choose trusted family member(s), friend(s) or professional(s) to appoint as Attorneys. Anyone can act for you, providing they are over 18 and are not bankrupt. It is important that you have complete trust in your Attorneys and confidence that they will make the right decisions on your behalf.

# Lasting Powers of Attorney

There are two different types of Lasting Powers of Attorney:

## Property and Financial Affairs LPA

Attorney(s) can make decisions and manage things for you such as :

- Paying bills and authorising day to day expenditure.
- Operating bank accounts.
- Liaising with utility and insurance companies.
- Managing investments.
- Dealing with tax affairs.
- Dealing with the sale of your house.
- Instructing professionals such as solicitors, accountants or financial advisors.
- Making small gifts to:
  - charities donated to in the past.
  - relations or people connected to you on birthdays, religious holidays, or special or customary family occasions.
- Large gifts of money or assets (such as your property) can only be made with the consent of the Court of Protection.

If you so wish, as well as acting for you in the event you were to lose mental capacity, Attorney(s) can have the power to deal with your affairs and make decisions on your behalf even if you have not lost mental capacity. This would only be if they have your permission, and can be very useful, for example if you became temporarily housebound, or if you would prefer to hand over the management of your affairs to someone you trust in later life.

## Health and Welfare LPA

Attorney(s) can make decisions and manage things for you such as:

- Where you will live, for example whether you should move into a care home.
- Healthcare decisions such as medical treatments you should or should not have.
- What diet you should have.
- Your daily routine.

The Health and Welfare LPA can only be used in the event you were unable to make these kinds of decisions yourself.

You can make either or both types of LPAs. If you like you can appoint different Attorneys under each type of power.

## Registration of LPAs

Your Attorneys can only use your LPA if it has been registered with the Office of the Public Guardian (OPG). The registration of an LPA usually takes several months after the application has been submitted to the OPG. Once it is registered, it is ready for use when the time comes.

When you register the LPA the OPG will charge a registration fee. In certain cases there may be an exemption / remission applicable (usually where the donor is in receipt of means tested benefits).

When your attorneys make decisions on your behalf, they must take your best interests into account, and consider what would have been your wishes and feelings if you still had mental capacity. This is the law, as per the Mental Capacity Act 2005.

# Frequently Asked Questions About LPAs:

## How many Attorneys?

You can choose as many Attorneys as you like and you can name replacements in case any of your Attorneys are unable to act or have died.

## Should the Attorneys act jointly?

You can indicate whether you want your Attorneys to act together or whether they can each act independently as well as together. For example, if you appoint two Attorneys and indicate that they must act jointly then no decisions or actions can be undertaken unless both Attorneys agree. Also, if one Attorney dies or cannot act the other can no longer act either. If, however you state that the Attorneys can act jointly and severally, they can act independently or together. This is useful where, for example one Attorney is overseas and the other Attorney needs to make an immediate decision. Also, if one attorney dies or cannot act, the other can continue to act.

## Should the powers of my Attorneys be restricted?

You can include restrictions in the LPAs so that your Attorneys are limited in the steps they can take. Alternatively with a Property and Financial Affairs LPA you can specify that your Attorneys can only act if you become mentally incapable.

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

You must select a person to complete the part of the LPA form confirming that you understand the document and that you are not under any pressure to grant the power. This person is called a Certificate Provider. This can be someone who you have known personally for at least two years or someone who has the relevant skills and expertise such as a doctor or solicitor. In many cases we can do this for you.

## Does anyone need to be notified of the LPA?

There is no legal requirement to notify anybody, but you can choose to notify somebody or a number of people if you wish to do so. Any notified person can object to the registration of the LPA with the OPG and there are certain prescribed grounds for lodging an objection.

## How do my attorneys begin using my LPA?

When the time comes for your Attorney(s) to act on your behalf, they need to present either the original document or a certified copy to whichever organisation they are dealing with (possibly along with photographic ID). The organisation in question will usually then register this on their systems and will then know that they can deal with your Attorney on your behalf.

## Frequently Asked Questions About LPAs:

### Do I lose control over making decisions for myself after my LPA is registered?

Your Attorneys can only act for you if it is convenient for you or you no longer have mental capacity to deal with the type of decision in question. If you disagree with the steps taken by your Attorneys and if you still have the mental capacity to do so, you can revoke the LPA. LPAs can be revoked by notifying the Office of the Public Guardian (OPG).

It is important to note that the purpose of making an LPA is to make life easier for you and your loved ones in the long run, not about taking your power to make decisions away when you are still mentally capable. Any concerns regarding the conduct of an attorney can be reported to the OPG.

### What happens if I do not make an LPA?

If you become incapable of managing your own affairs and you don't have an LPA someone will need to apply to the Court of Protection for a "Deputy" to be appointed who will then act on your behalf. It is usually a close relative who makes the application. A professional such as a solicitor can also act for you in terms of financial affairs. Unfortunately, the procedure can take many months and can be expensive.

After a Deputy has been appointed the Court of Protection directs how the Deputy should act. Deputyship should be avoided, if at all possible, because of the costs and the delays. In respect of Health and Welfare the Court of Protection may not appoint a Deputy because of the nature of the decisions to be made, and in many cases a Care Manager will be appointed to make decisions in your best interests.

### What is a "Living Will"?

A Living Will is a different type of document in which you indicate your views and decisions regarding medical treatment while you are still capable of making and communicating those decisions. A Living Will can either be an "Advance Decision" or an "Advance Statement". An Advance Decision is a decision to refuse medical treatment. An Advance Statement contains other decisions about how you would like to be treated. Only an Advance Decision is legally binding.

An Advance Statement should be taken into account when deciding what is in your best interests.

This is a sensitive and complex area of law. There is also an interaction between a Living Will and a Health and Welfare LPA.

We can discuss the options carefully and thoroughly with you if you think that this might be of interest to you.



## Making A Will 3 Simple Steps

Many people don't make a Will because it never seems to be the right time. We all lead busy lives and making a Will might not seem like a priority, so we have made the process as simple as possible.

There are three simple steps:

- Decide what type of Will suits you and who you would like to leave money or property to.
- We will arrange a meeting with you (either at one of our offices or if necessary at your home) or we can take your initial instructions over the telephone.
- We will prepare the Will for you to check and then make arrangements for you to sign.

Making a Will is not as time consuming as you may think...

Please speak to us about making a Will or ask for a copy of our Wills Guide.



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