



Lasting Power of Attorney



Prudent planning for the future

The benefits of drawing up a will are widely recognised. It gives you the opportunity to set out who you want to deal with your estate upon your death and how you want it to be administered. There are also steps that you can take in advance, to meet the possibility of you becoming incapable of managing your own affairs during your lifetime.

Lasting powers of attorney

A lasting power of attorney (LPA) is the legal appointment of someone who you trust (the attorney) to make decisions on your behalf if, at some point in the future, you are either unable to do so yourself or simply need help with your affairs in your later years.

The appointment will be specific to you. You can decide who will have the power to control your affairs and the precise limits of that power.

Who can make an LPA?

You will be able to make an LPA if you are 18 years or over, and have the necessary capacity. To prevent fraud a certificate of fitness is required, which must be signed by a suitably qualified person confirming that you fully understand what is involved in making an LPA, its nature and consequences, and that no fraud or undue influence has been used.

Who can I appoint?

You can appoint a relative, a friend or anyone willing to act for you, providing they are aged 18 years and over. It is essential to appoint someone you trust to make decisions in your best interests and indeed they can only act in your best interests.

You may wish to appoint more than one attorney and in this case, you can appoint them to act as follows:

- together; or
- together and separately; or
- jointly for some decisions and jointly and severally for other decisions.

You can also appoint a replacement attorney or attorneys to act in place of any attorney who is no longer able or does not wish to make decisions on your behalf. The rules are flexible and there are numerous options available.

When can it be used?

After completing the form and the certificate, the LPA must be registered with the Office of the Public Guardian before it can be used. Registration can take place at any time after you have created the LPA and there will be a fee for registration.

Clearly the sooner the LPA is registered, the quicker it becomes effective.

Property and affairs LPA

A property and affairs LPA will give power to your chosen attorney to make decisions on your behalf relating to all your property and financial affairs. The attorney will be able to do anything that you can do now but they will only be able to make decisions within the scope of the powers you give them. If you are able to give it, they must seek your approval to everything they do. Such powers might include:

- opening, closing or operating any account containing money
- claiming and receiving on your behalf, for example all pensions, benefits, allowances, services, financial contributions, repayments, rebates to which you may be entitled
- making all tax returns and adjusting and settling any claim for tax
- paying your household expenses
- buying, leasing, selling and otherwise dealing with any interest in property
- making gifts on your behalf, including any limits on the size of such gifts or the people that receive them, subject to any restrictions
- paying for private medical care and residential care costs.

The list above is just to give you examples of the types of powers that are included in a property and affairs LPA and is not intended to be exhaustive.

A property and affairs LPA can be used from the moment it is registered, whether or not you have capacity, subject to any restrictions or conditions you have made.

Personal welfare LPA

A personal welfare LPA will give power to your chosen attorney to make decisions about your health and personal welfare, such as where you should live and your day to day care, consenting to or refusing medical examinations and treatment, arrangements regarding community care services, and whether you would like to take part in social, leisure and educational activities. You can also authorise your attorney to have access to personal and confidential information.

In particular you can, if you wish, permit your attorney to consent to or refuse life sustaining treatment.

It is important to note that a personal welfare LPA will only take effect when you lack capacity to make decisions for yourself.

Safeguards

An LPA is a very powerful document. Your attorney will have the same control as you have over your money, savings, investments and property. You may therefore wish to restrict the power you give to your attorney.

For example, you may wish the LPA to be used only if you lack capacity and require medical evidence to that effect, or you may wish to restrict the power over certain of your affairs. The options are endless.

There are also safeguards built into the LPA document itself:

- the document must be registered with the Office of the Public Guardian before use. A register of LPAs is kept by the court and they can be asked to look into what any attorney does if someone believes they might not be acting in that person's best interests. Any serious problems will be sent to a special court called the Court of Protection, which has the power to remove the attorney
- the certificate of fitness must be submitted, as referred to earlier
- you can select people to be notified of any application to register the document which will give them the opportunity to object should they believe that the application is not in your best interests
- most importantly, your attorney must have regard to a Code of Practice set out in the Mental Capacity Act 2005 which provides guidance on the law governing LPAs. This code dictates that your attorneys must consult with you and obtain your approval to everything they do, so long as you have capacity. If you lack capacity, anything they do **must** be in your best interest.

What happens if you do not make a lasting power of attorney?

Should you lose capacity at any point during your lifetime, unless you have appointed an attorney, then someone will have to apply to the Court of Protection to be appointed as your deputy.

This is a long, expensive and complicated procedure and most importantly you do not get to choose who will act for you.

It is much better to plan ahead!

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