



Lasting Powers of Attorney – Frequently asked questions

What is a Lasting Power of Attorney?

A document which allows your appointed attorneys to act on your behalf when you cannot make decisions for yourself.

There are two types of Lasting Powers of Attorney ("LPA"). You may choose to set up both types or just one.

1. Property and Financial Affairs

Your attorneys will be allowed to make decisions about your property and financial affairs, such as selling your property, accessing your bank accounts, paying your bills and buying and selling investments.

While you have mental capacity, your Attorneys can deal with these matters for you with your consent but if you lose mental capacity, then your attorneys can deal with your property and financial affairs even if you do not have sufficient understanding to give them permission to do so.

2. Health and Welfare

Your attorneys will be able to make decisions on all aspects of your health and care, including where you live, who visits you and the type of care you receive. You can choose whether to give your attorneys the power to accept or refuse life sustaining treatment on your behalf

This LPA can only be used when you lack the capacity to make such decisions for yourself.

Why should you have a Lasting Power of Attorney?

By preparing an LPA you will have the peace of mind of knowing exactly who will be responsible for looking after you when you are unable to make decisions for yourself.

What happens if you become incapable and you do not have a Power of Attorney?

Your financial affairs may be put under the control of the Court of Protection. This Court would then decide who would manage your affairs. The person who is appointed (called "the Deputy") may not necessarily be someone you know or the one you would want to deal with your affairs.

The Deputyship process can be expensive and time-consuming. Annual accounts must be sent to the Court of Protection for approval and the Deputy's powers to manage your affairs are usually limited.

Health and welfare decisions may be made for you by the Local Authority and Medical Practitioners based on what are deemed to be your best interests. These best interest decisions might, of course, not actually reflect your true wishes.

Who can be your Attorney?

You can appoint any adult or adults you wish, for example you could appoint a family member, a friend, or a professional person. However, you should choose with care as the powers given by an LPA can be very wide.

How your Attorneys can act on your behalf?

If you appoint more than one attorney, you must specify how you would like for them to act. The options are: -

- Jointly and Severally - Any of your Attorneys will be able to make decisions on your behalf either together or individually. Only one Attorney is required to give authority for a decision.
- Jointly - All your Attorneys must make decisions together and give authority for decisions together. If any of them die or lose mental capacity, the LPA will cease to have effect.
- Jointly for some decisions and jointly and severally for others - There may be some situations where your Attorneys can act independently and others when they must act together.

Principles that your Attorneys must follow

Your attorneys must follow the principles of the Mental Capacity Act 2005 which sets out the following principles: -



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- You are assumed to have capacity unless it is established that you lack capacity;
- You are not treated as unable to make a decision unless all practicable steps to help you to do so have been taken

You are not treated as unable to make a decision merely

An act done, or decision made, under the Mental capacity must be done, or made, in your best interests;

- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be effectively achieved in a way that is less restrictive of your rights and freedom of action;

Certificate Provider

You will require a Certificate Provider who will sign your documents to certify that: -

- You have the mental capacity to understand the purpose and nature of the document and the scope of the authority under it;
- No fraud or undue pressure is being used to induce you to create the Lasting Powers of Attorney; and ● There is nothing else that would prevent the LPA's from being created.

You may choose (i) someone who has known you personally over the last 2 years or (ii) a professional person, such as a Solicitor, Probate Executive, Doctor or Accountant.

In most cases I can act as a Certificate Provider but will discuss this with you during our discussion.

Registering an LPA

Your attorneys can only use the LPA's after they have been registered at the Office of the Public Guardian. The registration process takes 8-10 weeks.

You do not need to register your documents straight away, however, the advantage of immediate registration is that the documents will be effective and ready to use should they be needed suddenly, otherwise the attorneys would have to wait for the registration process to be completed.

Ending an LPA

A lasting Power of Attorney automatically ends if: -

- You or the attorney die or become bankrupt;
- A marriage or civil partnership between you and the attorney is dissolved or annulled unless you specify that you would wish for it to continue in such circumstances;
- The attorney(s) lack mental capacity to make decisions; or
- The Power is 'disclaimed' (rejected) by the attorney.

The LPA does not end in the above circumstances if there is another Attorney left to act under a "joint and several" appointment. If the appointment is of more than one Attorney under a joint appointment, then the Lasting Power of Attorney will automatically be ended, unless you have appointed a replacement Attorney.

In the case of bankruptcy, this would only end a Property and Financial Affairs LPA. If the bankruptcy Order is an interim (limited in time) Order, then the powers under the LPA are suspended until the interim Order is completed.

Cancelling an LPA

You can revoke your LPA at any time, either before or after it is registered, so long as you still have mental capacity. If you lose mental capacity, the document can only be revoked by Court Order.

Keeping your documents safe

Your Lasting Powers of Attorney are important documents and would be difficult or even impossible to replace if lost or damaged. I can offer storage of your documents with the National Will Archive at a small



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charge of £25 per annum per document. Your original documents or certified copies would only be released upon the production of your written consent or a letter from a medical practitioner confirming loss of capacity.

Please note, however, that your attorneys can pay for sealed copies directly from the Office of the Public Guardian and, in such instance I would not be notified.

Already have an Enduring Power of Attorney?

Enduring Powers of Attorney ('EPA's') were replaced by LPA's in October 2007. If you have completed an EPA before this, then it is still valid. If it is no longer appropriate, then you should revoke your EPA by Deed of Revocation and set up LPA's instead.

EPA's only relate to your property and affairs, so you may wish to consider completing a Health and Welfare LPA to ensure that all aspects of your affairs and wellbeing are covered.

Fees and Expenses

Office of the Public Guardian Registration Fee is currently £82 per document. There are some circumstances when this may be reduced by either 50% or by 100%, subject to proof of entitlement of certain means tested benefits. This Fee is payable in addition to my charges set out below and is charged per document.

Preparation of one LPA document (i.e. either Property and Financial Affairs or Health and Welfare)	£250.00
Registration of one LPA document	£100.00
A single individual preparing both documents	£350.00
A single individual preparing and registering both documents	£550.00
A couple preparing both documents	£700.00
A couple preparing and registering both documents	£900.00

IMPORTANT NOTICE

This literature is intended purely as an overview of this area of law in England and Wales and no action should be taken upon it without specific legal advice. It is not intended as a substitute for formal legal advice on your specific circumstances.