



Guide to Lasting Powers of Attorney

There may be a time when you need someone to help you manage your property and financial affairs or your personal welfare. This could be due to age, ill health or a loss of capacity. From 1st October 2007, the only option for creating a Power of Attorney which covers mental capacity is in the form of a Lasting Power of Attorney (LPA)

What is an LPA?

An LPA is a legal document in which you (the person giving the LPA referred to as the Donor) choose someone that you trust (referred to as the Attorney) to make decisions on your behalf.

LPAs replaced Enduring Powers of Attorneys (EPAs) from October 2007. Whilst existing EPAs remain valid, EPAs can no longer be created.

An LPA must be signed when you are capable of doing so and it has to be registered with the Office of the Public Guardian (OPG) before it can be used.

Anyone aged 18 or over, with mental capacity can make an LPA.

An LPA is a very powerful document, you are trusting your Attorney and so you need to be confident you have picked the right person to act as your Attorney.

It is important to note that if you lose the ability to make decisions for yourself, then you will not be able to monitor what your Attorney is doing.

There are two types of LPA a Property & Financial Affairs LPA and a Health and Welfare LPA.

Property and Financial Affairs LPA

This type of LPA allows your Attorney to deal with your financial affairs, for example to pay your bills, operate your bank accounts. Sell your home. Your Attorney can manage your finances and property whilst you still have mental capacity as well as when you lack capacity.

This type of LPA can be used immediately once it has been registered with the OPG, having said that just because it is registered, you are not prevented from continuing to deal with your own affairs if you wish.

Health and Welfare LPA

This type of LPA allows your Attorney to make decisions about matters such as medical treatment, your diet, where you live, who you see and giving or refusing consent to life-sustaining treatment decisions.

This type of LPA can only be used by your Attorney, once registered with the OPG and once you are no longer able to make the decision by yourself.

Who can make an LPA?

Anyone aged 18 years or over with capacity.

Who can act as my Attorney(s)?

This is an extremely important role and one that the appointed person must agree to take on. You must trust your Attorney and believe that they have the relevant skills to deal with your property and affairs.

You can choose a family member, friend or a professional Attorney (such as a Partner of Hegarty Solicitors). An Attorney must not be bankrupt or had bankruptcy proceedings issued against them or be subject to a debt relief order.

You can also choose a Replacement Attorney in the event that your chosen Attorney is unable to act. It is also possible to have more than one Attorney. You can appoint more than one Attorney in one of the following ways:

Jointly: this means that all named Attorneys must always act together. This appointment may be viewed as a safeguard but may prove inconvenient, particularly for day-to-day decisions. Your LPA will be terminated if one of the Attorneys can no longer act (unless you have appointed a Replacement Attorney)

Jointly and Severally: this means that Attorneys can act individually or they can choose to act together. This provides more flexibility and if one of the Attorneys was unable to act the remaining Attorneys can continue to act.



Jointly: when making some decisions and jointly and severally. This is a combination of the two options above. We would suggest caution when considering this option due to the risk of ensuring that the provisions are clear to a third party.

Your Attorney must always act in your best interests. There are restrictions imposed by law upon your Attorney:

- They must keep accounts and can be asked to submit the accounts to the OPG
- Strict rules on what gifts they can make on your behalf
- Law against euthanasia and assisted suicide.

Registration

The LPA can be registered at anytime. We would recommend that you register the LPA immediately

There is a Court fee payable for each LPA of £82. Sections 12 to 15 of the LPA will need to be completed by you or your Attorney and the notices (in the form of an LP3) would have to be served to any notified person. Registration normally takes in the region of 6-8 weeks.

How the LPA is used after registration

Your Attorney can use a registered LPA for property and financial affairs decisions as soon as it is registered (unless it is provided otherwise) either before you lose mental capacity or afterwards. Your Attorneys can only use a Health and Welfare LPA if you are unable to make those decisions for yourself.

You decide when we will release the registered LPA (or a certified copy) to your Attorney.

Certified Copy LPA

We can provide you with a certified copy of the LPA at a current charge of £25 plus VAT (subject to a minimum order of 2). The OPG can supply certified copies at a cost of £35 per document.

What happens if I don't have an LPA?

If you lose the capacity to be able to manage your affairs without a valid LPA then your personal affairs will become the responsibility of the Office of the Public Guardian. In these cases a person's affairs are placed under the jurisdiction of the Court who appoint a Deputy to act on your behalf and the Deputy is therefore answerable to the Court.

This can be an expensive route. Court approval is required for any act to be carried out, accounts have to be submitted to the Court every 12 months, and financial

decisions are not carried out by close family or friends.

Do I need to seek legal advice?

You do not have to seek legal advice - it is your choice. We do consider however that an LPA is a powerful and important document and it is far more complex than the previous Enduring Power of Attorney system. We would recommend that anyone considering completing an LPA should seek appropriate professional advice.

How much does it cost?

Our standard charge for a single Lasting Power of Attorney is £480. The cost to complete both types of LPA is £720.

If we are acting for a couple, our standard charge is £720 for one type of LPA and £1,140 for both types of LPA.

In addition, the Office of Public Guardian charges a fee of £82 for registering each Lasting Power of Attorney.

*All prices are inclusive of VAT

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