

lasting powers of attorney

A Lasting Power of Attorney (LPA) is a deed by which you can give someone authority over your property and financial and/or health and welfare affairs. LPAs replaced Enduring Powers of Attorney (EPAs) from 01.10.2007, under the provisions of the Mental Capacity Act 2005 (although EPAs made prior to this date are valid and capable of registration). There are two types of LPA and you can set up one or both types:-

- the property and affairs LPA
- the welfare LPA

1. property and affairs LPA

This particular type of LPA is similar to the EPA and enables your attorney to make decisions about your property and affairs, which may include day to day management such as paying your bills, or major decisions such as selling your house. It is up to you as the donor to decide the extent of your attorney's powers, and any restrictions you wish to impose should be specified in your LPA.

Provided you have registered your LPA, it can operate whilst you still have capacity, allowing you to give instructions as to how you wish your affairs to be dealt with. However, you can specify that the attorney can only start managing your financial affairs in the event of your mental incapacity, but failure to do so will mean that your attorney(s) can start using their powers granted by the LPA as soon as it is registered.

2. personal welfare LPA

This LPA gives your attorneys the power to make various decisions about your health and welfare. Again, the gravity of the decisions they can make will vary according to the provisions you choose to put in your LPA. They may have to make day to day decisions about your diet, dress or daily routine. Alternatively, they may need to use their discretion in more serious matters, such as

- giving or refusing consent to particular types of healthcare, including medical treatment decisions e.g. an operation, or a course of treatment such as antibiotics
 - you staying in your own home, perhaps with help and support from social services
 - you moving into residential housing and choosing the right care home for you.
 - consenting to life sustaining treatment, e.g.: heart bypass, chemotherapy, organ transplant, artificial nutrition or hydration, (**only** if you expressly give them the power to make such decisions)
 - Stop particular treatments if they are burdensome or ineffective, (**only** if such express power is given)
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Your attorneys can only act within the powers you have given them, and some acts are prohibited regardless of the powers you grant them (e.g. consenting to marriage or divorce). You need to consider what powers you want your attorneys to have very carefully, and if you choose to grant them the power to consent to or reject life sustaining treatment, you should advise them of your preferences in those matters whilst you have capacity. You may even wish to limit the less serious powers, such as placing an obligation on your attorneys to discuss your place of residence with a particular family member.

the attorney(s)

The attorney(s) hold a hugely responsible position. They must always act in your best interests and are under a duty to help you to make as many decisions as possible for yourself. There are safeguards to protect the LPA from abuse, and ultimately Attorney's are answerable to the Office of the Public Guardian, who can impose sanctions on those who abuse their powers. Nevertheless, it is imperative that you consider your choice of attorney(s) very carefully, and only appoint people you have the utmost confidence and trust in. It is also important that the person(s) you appoint knows you well, and will not only listen to your requests and suggestions, but will also be capable of acting consistently with your wishes when you do not have the capacity to give them guidance.

You can have as many attorneys as you like, but if you choose more than one you need to decide whether you want them to act:-

- together in every matter (decisions must be unanimous) or
- together and independently or (so they act alone or work together as they see fit) or
- together in some matters and independently others (for example all big decisions such as sale of house must be made together)

If you do not specify how you wish your attorneys to act, they will have to act together on all decisions, which may not be practical, especially due to geographical restrictions etc.

You can, if you so chose appoint replacement attorneys to act if your first choices are unable to act.

certificate providers

The LPA is a much longer, more complicated form than the EPA. In addition to the LPA form itself, you must provide a signed certificate to prove that you understand the form, and ensure that the LPA is not fraudulent or made under undue pressure. The person who signs this certificate is known as a certificate provider and can be someone with relevant skills, such as registered healthcare professional, Solicitor, barrister or advocate, registered social worker, Independent mental capacity advocate, or alternatively it can be signed by someone who has known you personally for at least two years, provided they do not fall into one of the following categories:-

- any member of your or your attorney's family,
 - business partner or paid employee of you or your attorney,
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- an attorney listed in your LPA or any LPA or EPA you have made previously,
- the owner director or employee of a care home in which you currently live or their family members or
- a director or employee of a trust corporation appointed as attorney in your LPA.

named persons

Ideally, you should also give details of up to five people you wish to be notified of the registration of the LPA. The people you name should know you well enough to be able to raise any concerns they may have about the application to register because once notified, they will be provided with details of how to object to the registration. It is wise to let these people know you have named them before making your LPA so that you have an opportunity to explain to them what it means, so that if they do not wish to be named you can consider an alternative contact. Once the LPA is made, it is essential that you keep the contact details of these people up to date, by keeping a note or letter with the original LPA.

NB: It is advisable to try and include people to notify, because if you are unable to do so you must have two certificate providers instead.

get in touch

To find out more about what we can do for you please contact:

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