



# Lasting Power of Attorney

Creating peace of mind and making life easier





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## What is Lasting Power of Attorney?

A Lasting Power of Attorney, or LPA for short, is a legal document which gives the people you name (your Attorney's) the power to help manage your affairs and make decisions on your behalf.

This can be invaluable if you are ever in a position where you are unable to make any decisions for yourself, or manage your own finances or affairs. This can often come as a result of an accident or a disease such as Alzheimer's Disease or Dementia. Having an LPA in place ensures that the people you would wish to deal with your affairs in this situation, will have the power to do so. If you don't have an LPA in place and can no longer make your own decisions, your family and friends will not have automatic legal authority to act for you and they will need to make an application to the Court of Protection for a Deputyship Order. This can be an expensive and lengthy process.

Although you may not foresee the need for an LPA anytime soon, the unexpected can happen at any time and unfortunately it is not possible to make an LPA after you have lost capacity.

**It is therefore never too early to consider having LPA prepared.**

## Types of Lasting Power of Attorney

**There are two types of LPA.**

One deals with your property and finances, and the other deals with your health and welfare. You can decide to have just one type prepared, or both.

Amongst other things, a 'Property & Financial Affairs LPA' would give your Attorney's the power to manage your bank accounts, pay household bills and sell or buy a house.

A 'Health & Welfare LPA' would allow your Attorneys to decide where you should live, organise the type of care you receive and could consent to, or refuse medical treatment on your behalf.

## Property and Financial Affairs LPA

A Property and Finance LPA provides your Attorneys with the power to make decisions on your behalf about your property and financial affairs.

### This can include things such as:

- Managing your bank and building society accounts, including things such as organising direct debits or making decisions about savings and investments
- Paying any bills
- Writing cheques on your behalf
- Receiving pensions, salaries or any other payments which might be due to you
- Making arrangements to maintain your property
- Putting adequate insurances in place
- Selling or renting your home

As well as being an invaluable document, if you ever lose capacity, a Property and Financial Affairs Lasting Power of Attorney can also be used by your Attorneys to cover temporary periods, where you may not be available to make final decisions, for example, whilst you are overseas or recovering from an operation, which could make getting to the bank or paying bills difficult.

## Health and Welfare LPA

A Health and Welfare LPA allows you to appoint Attorneys to make health and welfare decisions on your behalf.

### This can cover decisions such as:

- Your ongoing medical care
- The refusal or continuation of life-sustaining treatment
- If you should be moved into a care home
- Any required social care needs
- How your daily routine is managed and how your daily requirements should be met

Unlike a Property and Financial Affairs LPA, a Health and Welfare LPA can only be used once you have lost your mental capacity and the ability to make your own decisions.



## What are the Attorney's duties?

Being an Attorney is an important role, which should not be taken on lightly. Your chosen Attorney or Attorney's should be aware of what will be expected of them and be comfortable with the level of responsibility required. An Attorney's duties are set out in the Mental Capacity Act 2005 and its Code of Practice, however, the main objective for any Attorney is to always ensure that your best interests are put first.

**Directions for Attorneys contained within the Mental Capacity Act 2005 include:**

- To follow any instructions / help within your LPA
- To follow a duty of care when making any decisions on your behalf
- To not benefit or profit personally from any decisions they make on your behalf and avoid any potential conflict of interest
- To act honestly and with integrity at all times
- To keep any information relating to you confidential, unless specifically instructed otherwise
- To maintain accurate and updated records of anything done on your behalf
- To only make decisions on your behalf when your unable to do so yourself
- To take your wishes into consideration, even if your Attorney's disagree with them

It is important to remember that a personal Attorney cannot charge a fee for the work they undertake as an Attorney.

## Who can act as an Attorney?

Anyone aged 18 or over can act as an Attorney (as long as they are not Bankrupt, subject to a DRO (Debt Relief Order or IVA (Individual Voluntary Arrangement)).

**Attorney's should be chosen wisely. When choosing your Attorney's you should consider factors such as::**

- How well they manage their own affairs
- How well you know them
- If you trust them to make decisions solely in your best interests
- If they will be prepared, able and happy to take on this role for you

Often people will choose to appoint a professional Attorney in their LPA's. Although a professional Attorney will charge for their service, this can reduce the burden on their family and friends and ensure that decisions are made completely independently. This can also be useful where there are potential conflicts within a family.

## FREQUENTLY ASKED QUESTIONS

### Q. What happens if I don't have an LPA and I lose mental capacity?

**A.** There is no automatic right for your family or friends to take control of your finances or personal decisions, if you lose mental capacity. Not even your spouse will be able to take full control over these decisions for you without making an application to the Court of Protection. Obtaining an order from the Court of Protection is notoriously costly and time consuming and the Court will often provide restricted powers to the person eventually appointed (known as a Deputy). There are also no guarantees that the Court will appoint the same person you would have chosen to manage your affairs. Often a professional Deputy is appointed by the Court, which will incur ongoing fees that could have been avoided.

### Q. Can my Attorney's do whatever they like?

**A.** No. Legally your Attorney's must act in your best interests and must follow strict principles, which are outlined in the LPA and within the Mental Capacity Act 2005.

### Q. Can an LPA be cancelled?

**A.** Whether or not your LPA has been registered with the Office of the Public Guardian, you can cancel it at any time providing that you still have the full mental capacity to do so.

### Q. What happens if I have already made an Enduring Power of Attorney (EPA)?

**A.** EPA's were replaced by LPA's some time ago, but they can still be valid documents. However, EPA's are more restrictive in the powers they provide when compared to LPA's. For example, they cannot provide any provisions for health and welfare or to be used in any capacity until you have fully lost your mental capacity. This can be frustrating if you are ever physically unable to manage your affairs, but you still retain your mental capabilities. If you have an EPA in place, it is important that you review its contents to ensure you are happy with the provisions it provides. It may be beneficial for you to look at completing an LPA to replace our old EPA, so that your Attorney's will be able to take advantage of the additional powers an LPA can provide

### Q. Do I need to use a professional to make my LPA?

**A.** As with many other legal documents, it is possible to make an LPA yourself, however, it is not always advisable. LPA's can be complicated and unfamiliar so we would always recommend seeking advice from a professional to ensure that your LPA is drafted correctly and contains all the powers or restrictions that you would require.

### Q. Where should I store my LPA?

**A.** LPA's are important legal documents and it is imperative that they are kept safely and securely, as your Attorney's will be asked to produce the original documents by institutions requiring proof of their appointment. It is therefore important that you consider where you will store these documents and question if your home would be an appropriate place. We are able to offer our customers safe and secure document storage and we would be happy to talk through our storage solutions with you.



## Registering a Lasting Power of Attorney

Once you have completed your LPA this document will need to be registered with the Office of the Public Guardian (OPG) before your Attorney's can act for you.

Whilst an LPA does not strictly need registering straight away, having an unregistered LPA can cause unnecessary delay and stress to your Attorney's, if they are required to register your LPA after you have lost capacity. Your Attorney's will not be able to act for you, or make any decisions on your behalf until your LPA has gone through the registration process with the OPG. This process can take several months to complete and if there are any queries raised by the OPG, or if they require any amendments to be made, you will not have the required capacity to approve any changes. At the worse, this could mean that your LPA is invalidated.

To ensure that your Attorney's can act for you straight away, we will always recommend that you register your LPA as soon as it has been drafted. This also means that any possible problems with your LPA can be highlighted whilst you still have the capacity to approve and rectify any changes, giving you the peace of mind that your LPA is correct and in place in the event that something were to happen to you without warning.



# What is Probate?

The term 'Probate' is widely used to describe what happens to someone's property, money and possessions - their estate; when they die. This is also known as estate administration or administering an estate.

The process involved in administering an estate can be complex and time consuming.

## It includes things such as:

- Establishing exactly what the person who died owned - their assets and what they owned - their debts
- Notifying government departments, such as Passport Office, the DVLA and HMRC, as well as utility companies and any other relevant organisations that the person has died
- Making sure the assets are secure and protected from damage, especially in the case of an unoccupied property
- Preparing the Inheritance Tax forms and calculating the tax due to be paid and arranging payment of this when submitting the account to the HMRC
- Dealing with online accounts belonging to the person who has died to protect against misuse and identity theft
- Applying for and obtaining the Grant of Representation from the Court

- Identifying all of those entitled to inherit from the estate - the beneficiaries; as specified in the Will or determined by the Law in absence of a Will
- Closing bank accounts, collecting in money due to the estate - selling property and other assets or transferring these to the appropriate people or organisation
- Paying all debts, including mortgages, credit cards and loans, as well as expenses incurred during the estate administration period
- Finalising the Income Tax for the person who has died and for the estate and clearing this with HMRC
- Preparing and distributing estate accounts to the beneficiaries, and the Court if required
- Distributing the remainder of the estate to the beneficiaries







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