

Lasting Power of Attorney (LPA)

How to give family members or someone else you trust the legal power to make decisions on your behalf.

Each of us hopes to remain healthy and independent for as long as possible. But there can come a time when we aren't physically or mentally able to make decisions for ourselves. For this reason it is worth planning well in advance so someone you know and trust can manage your affairs for you if the need arises.

The legal power to act on behalf of someone who is mentally or physically incapacitated is known as 'Lasting Power of Attorney' (LPA).

An LPA is easy to set up but it's essential to have one. Without an LPA, even close family members may not have the authority to make decisions about your care in old age, your financial welfare – or your assets. **Never assume a person will be able to act for you simply because they are an immediate family member.**

Types of LPA

There are two types of Lasting Power of Attorney that can be arranged:

Property & Affairs LPA: enables the attorneys to make decisions regarding how your money is managed and your property and other financial affairs are handled.

Personal Welfare LPA: covers healthcare and welfare, including medical treatment, and where a person lives. It can give the attorneys power to refuse or consent to treatment on your behalf.

Each of these LPAs requires a separate application and a separate fee when it has to be formally registered. It is strongly advisable to arrange both kinds of LPA so your affairs are fully covered.

Enduring power of attorney (EPA)

The Lasting Power of Attorney was introduced in 2007 to replace Enduring Power of Attorney (EPA). The key difference is that EPAs are not registered and did not cover personal welfare. It is possible to register an EPA and set up a Personal Welfare LPA to run alongside it.

Setting up an LPA

Step 1. Appoint a solicitor

It is possible to complete LPA yourself by downloading forms online. However, as it is a legally-binding contract, it is highly advisable to get professional help. Many solicitors offer a flat fee for arranging Lasting Power of Attorney.

Step 2. Choose your attorneys

You next need to decide who should handle your affairs if you can't. It must be someone over 18 you trust absolutely and who is still likely to be in good health in your later years.

It's advisable to appoint at least two attorneys to each LPA. For example, many parents choose to give all their offspring joint lasting power of attorney. You can also nominate substitutes in case a nominated attorney dies.

Step 3. Complete the LPA

The LPA document follows a strict format. You must name your attorneys and whether you want them to act together or independently. There is also room to specify restrictions and conditions – e.g. when the LPA should come into effect. Separate documents must be completed for a personal health and welfare LPA and a property and financial affairs LPA.

Step 4. Get certification

To be valid, an LPA must also be signed by an independent third party to certify you understand it and agreed to it of your own free will. The 'certificate provider' must have known you for two years or be a professional (e.g. doctor, lawyer, teacher). They cannot be a family member, one of your attorneys or a member of an attorney's family.

Step 5. Give request for notice

As a further measure against abuse, you can request in the LPA that up to five other people are notified if and when the LPA is registered with the Office of the Public Guardian. If you don't request notice, you must have two certificate providers sign the LPA.

Putting the LPA into effect

Once drawn up, copies of the LPA can be kept by you, your solicitor and your attorneys. If the time comes that the LPA is required, your attorneys must register it with the Office of the Public Guardian. This requires completing an application form and a fee (currently £150). Separate fees are payable for a personal health and welfare LPA and a property and financial affairs LPA, so consider how these fees would be funded.

Partnership

Appointing attorneys

- Attorneys must be over 18, in good mental health and cannot be bankrupt if appointed to a Property & Affairs LPA.
- You can appoint attorneys to act together so all of them would be required to sign any document. Or you can appoint them to 'act together and independently' so only one would need to provide a signature.
- Alternatively, you can request that attorneys act together on some issues but independently on others.

NOTE: A spouse or partner who owns a home jointly with you cannot have attorney powers to transfer ownership of your share of the property.

Your questions answered

Can I set up an LPA and still control my own affairs?

Absolutely. Your attorneys would only take control if you lose mental capacity – and you can include a restriction to this effect in the LPA document. Conversely you can stipulate that your attorneys can act on your behalf while you are still mentally sound, if you wish.

Can an attorney change my Will?

No. They can only see your Will if you give them permission to and cannot change anything in it without permission from the Court.

Can I cancel an LPA?

You can cancel or amend an LPA at any time before it is registered. Once registered, you must give notice to the Office of the Public Guardian. You cannot cancel an LPA once you lose mental capacity, although a third party can complain to the Court if concerned your affairs are not being dealt with properly.

I have made a Living Will.

How would an LPA work with this?

A Living Will is a legally-binding document that enables you to specify when life-sustaining medical treatment should be withheld. A Living Will usually takes priority over an LPA so it's important to discuss your wishes with your appointed attorneys.

Who should I inform about the LPA?

It is advisable to provide anyone who might have to act under the LPA with a solicitor's certified copy of the LPA. This could include your bank and your GP.

What happens if an attorney dies after I lose mental capacity?

If you have appointed your attorneys to act together, the LPA will lose validity if one of them dies, becomes bankrupt or incapacitated. The solution is to nominate substitutes or request that attorneys can act 'together and independently'

Can I choose which attorney handles what?

You can stipulate various restrictions or conditions in the LPA document. You can also appoint different attorneys for your personal health and welfare LPA and a property and financial affairs LPA.

Useful contacts

- To find a solicitor:
www.lawsociety.org.uk
www.lawscot.org.uk
Telephone no. 020 724 2122
- For further guidance and to download the LPA forms:
www.publicguardian.gov.uk
www.publicguardian-scotland
Telephone no. 0845 330 2900

What if there's no LPA?

Arranging Lasting Power of Attorney is the only way to ensure the people you want to will handle your affairs when you can no longer do so.

If an LPA is not in place and you suddenly become mentally incapacitated, you will be registered with the Court of Protection. A receiver will be appointed by the Court with sole power to make welfare and financial decisions on your behalf, including release of funds from bank accounts, sale of property and your medical treatment.

It is possible for family members to apply to the Court of Protection to become the receiver but this can take time and money. Plus their powers may still be more limited than under an LPA.