

Alison Fielden & Co.

Solicitors & Notary Public

FACTSHEET

Lasting Powers of Attorney - An Introduction

A Lasting Power of Attorney (LPA) is a document used to appoint a person or persons that you trust (your Attorneys) to deal with your affairs during your lifetime, if you become unable to deal with them yourself. The power granted by the LPA enables your Attorneys to act with your consent, for example if you are taken into hospital or are going abroad, but it also continues so that they are able to act on your behalf if you lose mental capacity.

There are two types of Lasting Power of Attorney (LPA) available:

1. Property and Affairs
2. Personal Welfare

The Property and Affairs LPA allows your Attorneys to deal with your financial matters, such as paying bills, using bank accounts and in extremis selling your property. The Personal Welfare LPA enables your Attorneys to make healthcare decisions on your behalf, such as giving their consent to any medical treatment you may require. The Personal Welfare LPA can only be used by your attorney if you lack capacity.

Lasting Powers of Attorney obviously give your Attorneys a great deal of power to make decisions on your behalf, and it is therefore important to choose people who you trust to make important decisions for you. Most people choose to appoint family members or close friends as their Attorneys. You may appoint different Attorneys in each LPA, for example if you have a friend who has expertise in financial matters you may want that person to be appointed as an Attorney in your Property and Affairs LPA, and your close family to be your Attorneys in your Personal Welfare LPA. You may appoint a substitute Attorney in case any of your Attorneys become unable or unwilling to act on your behalf.

Your Attorneys have a duty to act in your best interests under the Lasting Power of Attorney, and they must assist you in making your own decisions if possible. It is possible to restrict the power that you grant your Attorneys in your LPA, and also to give them guidance as to how you wish them to exercise their powers, for example in your Personal Welfare LPA you may not want your Attorneys to make decisions regarding life-sustaining treatment, as you may prefer such decisions to be made by a doctor.

Lasting Powers of Attorney came into effect on 1st October 2007. The Property and Affairs LPA replaced the Enduring Power of Attorney, which could previously be made to appoint Attorneys to deal with a person's financial matters. All valid Enduring Powers of Attorney made before 1st October 2007 remain effective.

Unlike the Enduring Power of Attorney, a Lasting Power of Attorney must be registered with the Office of the Public Guardian before it can be used, the registration fee is currently £120. An LPA can either be registered on its creation and so be immediately effective, or registration can be delayed until its use becomes necessary.

In summary, Lasting Powers of Attorney are useful for any person of any age. They provide the flexibility to enable someone else to deal with your affairs when you are mentally capable but temporarily unable to deal with them yourself, and also provide the assurance that someone you have appointed yourself will have the power to act on your behalf should you lose mental capacity. In the event that you lose mental capacity, having a LPA in place avoids expensive and time consuming applications to the Court of Protection for a Deputy to be appointed to make decisions for you.

ANSWERS TO COMMON QUESTIONS

What is a Power of Attorney?

A Power of Attorney is a legal document giving power legally to someone to make decisions and choices for you. The Court treats those decisions and documents as if they were made by you.

What is the difference between an LPA and an EPA?

An EPA (Enduring Power of Attorney) gives the person you choose to act on your behalf (your Attorney) the right to make decisions for you only in relation to your financial affairs. LPAs give Attorneys the right to make decisions about your health and welfare, as well as financial matters.

Who can make an LPA?

Anyone who is over 18 can make an LPA as long as they understand what it means.

When can I make an LPA?

You can make an LPA at anytime. You do not have to wait until your ability to make decisions is diminished before making one.

What will the LPA do?

It will appoint one or more Attorneys to deal with your property, your finances, your health – in particular what sort of treatment you receive, and welfare – dealing with what care and support you need. You can appoint one Attorney to make financial decisions and one to make health and welfare decisions, or you might want the same Attorney to make both decisions.

Do I have to make both a 'Personal Welfare and Property' and an 'Affairs' Lasting Power of Attorney?

No, it is not necessary to make both. One can choose to make, for example, a Property & Affairs LPA only.

Can my Attorney change their mind about helping me?

Your Attorney can decide not to be your Attorney any more. If you have mental capacity, they can tell you directly that they have changed their mind. If you have lost mental capacity, they will have to tell the Office for the Public Guardian.

Can I change my LPA?

You can choose whether to register your LPA with the Office for the Public Guardian when it is set up or at a later date. You should bear in mind that the document will take about 6 weeks to register. If you wish to change your LPA at any time you can do so, provided that you still understand what an LPA is. If you have already registered your LPA you will need to inform the Office for the Public Guardian that you are changing your LPA but, if you have not yet registered, changes can be made with the help of your professional adviser. The OPG will make a charge for registering changes.

How powerful is the LPA?

The LPA is a very powerful document, giving another person power to take control of your financial affairs, as well as to make decisions concerning your health and well being. It is therefore vital that you know and trust your Attorney to act in your best interests at all times.

Who checks that I have understood the LPA?

Within the LPA form is a Certificate of Confirmation of Understanding that has to be completed by an independent person such as a Lawyer or Health Professional, confirming that they are happy that you have understood the LPA.

How is an LPA registered?

You can either register your LPA at the Office for the Public Guardian when it is set up or at a later date. You will have to give notice to a maximum of 5 people that you are registering your LPA. The people served with notice will have the opportunity to object to the registration if they believe that:

- i) You did not understand it; or
- ii) You have stopped it; or
- iii) You have been put under unfair pressure to make one; or
- iv) It is not in your best interests.

Will my Attorney have to consult me when making decisions?

After registration your Attorney should allow you to make whatever decisions you can and involve you in any decisions that your Attorney is making.

What happens if I do not make an LPA?

If you do not make an LPA and you become mentally incapable of managing your affairs, either through illness or accident, somebody (usually a family member) will have to take control of your affairs. In order to do so, they will have to apply to the Court of Protection to be appointed as your Deputy. This can be a complicated, time-consuming and expensive process.

In addition, your Deputy would often be a son or daughter or other close relative and they would have to complete two very lengthy forms. This could cause distress at what is likely to be a very emotional time for them.

I should like to make a Lasting Power of Attorney. What should I do?

Please telephone our office and we shall be pleased to arrange an appointment. We shall discuss matters thoroughly with you. We shall need your details, including your date of birth and we shall also need the details of the people whom you wish to appoint as Attorneys.

Please note that, for money laundering requirements, you will be asked to provide proof of your identity, such as a bank statement or utility bill to show your address and photographic ID, for example a valid passport, driving licence or bus pass.

Alison Fielden & Co.

Solicitors & Notary Public

The Gatehouse
Dollar Street
Cirencester
Glos. GL7 2AN

Tel 01285 653261

Fax 01285 885372

<http://www.alisonfielden.co.uk/>