

# Why you should consider a Lasting Power of Attorney

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Whilst we might be pretty familiar with the idea of a will setting out what we want to happen when we die; what about making decisions in lifetime if we are unable to do that ourselves?

Well, that is where a Lasting Power of Attorney (LPA) comes into play. An LPA is a document which we (the Donor) can sign, setting out who we would like to make those decisions for us in our lifetime (our Attorneys).

For people who have never considered an LPA before, this aspect of the law can feel particularly daunting. Choosing someone to make decisions on your behalf is something that many people will put off, however, we want to demystify the process as much as possible.

In this guide, we explore LPAs in more detail, offering practical advice for people who are considering this option for themselves or a family member.

## Do I need an LPA?

You may need an LPA to make decisions for you, or to act on your behalf, for a number of reasons:

- You may be in hospital and require assistance with everyday tasks, such as paying bills - this can be a temporary situation.
- You may need longer-term assistance if you have been diagnosed with an illness such as dementia, which means you may lose the mental capacity to make your own decisions in the future.

## What are the different types of LPA?

There are two types of LPA: one for Property and Financial Affairs, and one for Health and Welfare. Whilst each document allows an Attorney to make decisions on our behalf concerning different situations, the implementation of the documents is triggered by different events. Whereas a Health and Welfare LPA comes into effect only when the Donor has lost mental capacity, a Property and Financial Affairs LPA can be used both whilst a Donor has mental capacity but will also continue in force should they later lose capacity.

A Financial Affairs LPA can be used while you still have mental capacity, or alternatively, you can state that you only want it to come into force in the event that you lose capacity.

This type of LPA can be used for:

- Buying and selling property
- Paying your mortgage
- Investing money
- Arranging repairs to your home
- Paying bills

It is possible to restrict the types of decisions that your Attorney can make, or if you prefer, you can let them make all decisions on your behalf.

A Financial Affairs LPA must keep accounts and make sure that their money and assets are kept separate from those that belong to you. You are able to ask for regular updates on how much has been spent and how much money you have. This information can be sent to your family member or a solicitor if you lose mental capacity, meaning you are protected against any potential issues.

An LPA for health and care decisions can only be utilised once you have lost the mental capacity to make decisions for yourself. The appointed Attorney is able to make decisions on your behalf about the following:

- Where you should live
- Medical care provided for you
- Who you should have contact with
- Your diet
- What kind of social activities you take part in

Your Attorney can also be asked to make decisions about potentially life-saving medical treatment.

## **How do I appoint a Lasting Power of Attorney?**

In order to set up a Lasting Power of Attorney, you should carry out the following steps:

1. Get in touch with the Office of the Public Guardian to obtain the relevant paperwork, as well as an information pack. You are able to download the forms or fill them out online.
2. Fill out the forms. You can do this independently or with a solicitor. Seeking professional advice will help to prevent issues further down the line, particularly if you are unsure of the process or have complicated affairs.
3. Ensure your LPA is signed by a certificate provider, who confirms that you have understood it and haven't been put under any pressure to sign it. The certificate provider should be someone you know well, or a professional person, such as a solicitor or doctor.

Your LPA must be registered with the Office of the Public Guardian before it can be used, which comes with a fee. Those individuals who are on a low income may be eligible for a 50% discount, while those who are receiving certain benefits won't have to pay anything at all.

An LPA must be registered while you still have mental capacity. If you lose mental capacity, but signed the LPA while you still had mental capacity, your Attorney can register it for you.

## **Who should I choose as my LPA?**

The role of an Attorney involves a great deal of responsibility, which means it is important to trust the person or people who you select. Your Attorney can be your spouse, a family member, friend or partner, or a professional, such as a solicitor.

Choosing more than one Attorney is recommended, and each individual you choose can make decisions jointly (where they work together on all matters) or jointly and separately (where they act together or separately as they choose).

It can be a good idea to specify that Attorneys must act jointly on specific decisions, and then separately on others. You can also appoint replacement Attorneys, who can step in if something happens to one of your Attorneys.

In most cases, appointing Attorneys to look after our affairs can make potentially difficult situations more manageable, however, given the wide range and significance of decisions which Attorneys can make it is essential to take time to consider who are going to be the most appropriate people to appoint and to fully understand the powers that will be conferred on them and so it is prudent to seek professional legal advice before entrusting others with control over our finances and health decisions.