



Lasting Power of Attorney Guide

“Making a Lasting Power of Attorney is as important as making a Will – it can save people unnecessary trauma, expense and makes sure their own wishes are followed what ever happens. It is crucial for people of all ages.”

Former Justice Minister Lord McNally, 2013

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) allows the appointment of one or more people of your choice (attorneys) to manage your affairs. You can choose to do this just to make your life easier, or for it to be in place in case you cannot manage your own affairs, whether that be through circumstances that are temporary (such as being unconscious) or permanent (such as developing dementia) loss of mental capacity. People normally choose those closest to them to act as their attorneys. It is also possible to appoint replacement attorneys to take over if your attorneys are no longer able to act.

Unless you have created an LPA while you have the capacity to do so, if your family need to manage your property, finances or make welfare decisions for you, they may have to make an application to the Court of Protection for a deputy to be appointed. This is a costly and lengthy process and the deputy has to produce annual accounts to the Court of Protection showing all transactions made and the reasons for them.

Creating an LPA in advance is a much cheaper and easier process than making an application for a deputyship order. In October 2007 the Enduring Power of Attorney (EPA) was replaced by the LPA. The LPA is a more comprehensive power of attorney than an EPA and you can register an LPA before anything happens to you. The LPA is the direct replacement of the EPA, although an existing EPA is still effective if fully completed prior to October 2007.

NB. An EPA cannot be amended so it is recommended that you review it to make sure it still reflects your wishes. Can all your chosen attorneys still act? If there are any changes you will have to create a Lasting Power of Attorney.

Who can I appoint as my attorney?

Your attorneys should be people you trust as you will be giving them extensive power to make decisions about either your health and welfare or your property and financial affairs or both. The people you choose must be 18 years old or over at the time you appoint them.

Your attorneys must keep a record of all transactions they carry out on your behalf and, upon your request (while you retain mental capacity), must provide details of your income and how much has been spent.

There are different types of LPA: An LPA Financial Decisions enables you to choose who can make financial decisions for you and an LPA Health and Care Decisions enables you to choose who should make decisions about where you should live and medical treatments you receive. You can also put in place a separate LPA Property and Financial Affairs in respect of your business interests.

What your attorneys can do:

	LPA Financial Decisions	LPA Financial Decisions (Business)	LPA Health & Care Decisions
Deal with bank or building society accounts	✓	✓	
Deal with bills	✓	✓	
Deal with making investments	✓	✓	
Receive state benefits on your behalf	✓		
Sell your home should the need arise	✓		
Discuss medical issues with doctors			✓
Make decisions about healthcare and/or life sustaining treatment			✓
Make decisions about what you eat			✓
Decide on where you should live			✓

LPA Health and Care Decisions

An LPA Health and Welfare allows your attorneys to make decisions regarding all of your health and welfare circumstances. The types of decisions your attorneys can make include those relating to where you live, the type and quality of care you receive and the medicines and treatment you should or should not receive.

While this may seem an extreme situation, the ability to request details of medication from doctors can be very important, especially if you have lost the mental capacity to do so yourself. Without an LPA Health and Welfare, your family will not be able to access this information for you.

An LPA Health and Welfare also enables you to authorise your attorneys to make end of life decisions for you. It's important to note that no one you appoint can make these decisions while you still have the mental capacity to do so yourself.

LPA Financial Decisions (Personal)

An LPA Financial Decisions gives your attorneys the authority to act on your behalf in financial matters such as paying bills, running your bank account, selling investments or your house and claiming any state benefits. There are strict laws in place to prevent your attorneys from acting other than for your benefit. Decisions can be made in respect of things such as:

- Paying bills, loans and mortgages;
- Authorising repairs to your property;
- Buying and/or selling your home;
- Making investments; and
- Making normal gifts to people for special occasions.

If you lose the mental capacity to make decisions for yourself, your bank accounts risk being frozen until someone can be appointed to make decisions for you. This applies also to joint accounts and inevitably causes distress for friends and family where bills cannot be paid and pensions or benefits cannot be accessed.

LPA Financial Decisions (Business)

How would your business fare if you were unable to contribute to the running of it anymore? When you own a business, it's important to consider whether a separate LPA specifically for your business matters is appropriate. In most cases it will be.

If you own a business and are suddenly unable to take care of it due to an accident or illness, what would happen? Many business owners take out Key Person Insurance Policies but that won't assist with the day to day running of the business.

In some cases, you may also have a personal LPA but it's likely that the attorneys you appoint in that are family members who may not have the knowledge necessary to run your business or (in some cases) any business knowledge at all. In addition, bank accounts might be in the name of the company and not capable of being operated by an attorney appointed pursuant to a personal LPA. This raises potentially serious issues for the continuation of the business.

Appointing an attorney for business matters is like taking out another insurance policy for business continuity. It goes a long way to ensuring that the business can continue to run smoothly and that someone you trust is going to take care of it.

You should consider who would be the most appropriate person to assume responsibility for the running of your business. This is often not the person you would choose for the management of your personal finances. It might be a business partner or an accountant. It's also likely to be someone who knows the business well.

A business LPA doesn't cost any more than a standard personal LPA and should be considered as part of a wider business succession plan.

What do I do next?

To make a valid LPA you must have the mental capacity to understand what you are doing and you must not have been put under any pressure to create it. The LPA must also be signed by a certificate provider who confirms your understanding of the document and who must either be someone you know well, or a suitably qualified professional.

One of the decisions you need to make is whether you wish your attorneys to be able to act while you still have mental capacity, or if they can only act when you have lost mental capacity.

Before your attorneys can act at all, the LPA must be registered with the Office of the Public Guardian (OPG). As the registration can take several weeks, it's strongly recommended that the LPA is registered immediately upon signature so that it's in place when needed. If you don't register the LPA, should you lose capacity, your attorneys won't be able to act on your behalf until they can get the LPA registered, which may then be too late. Another serious issue could arise with delaying the registration in that any technical errors with the witnessing or dating would mean that the paperwork may be rejected at a time when you don't have the mental capacity to complete a new instruction. Immediate registration is best practice and strongly recommended by the OPG.

When your LPA is being drafted you have the option to restrict how and when it's used. You can appoint substitute attorneys and elect a person (or people) that must be notified before your LPA can be registered.

Our consultants have many years of experience advising clients in this area.

**If you would like to discuss further, please contact Tim Turner
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