

Lasting powers of attorney (LPAs)

Managing our affairs

Though none of us likes to think about losing the ability to manage our own affairs, it can happen. Dementia, brain injuries and mental health problems are a few of the conditions that can render us incapable of making our own decisions, temporarily or permanently. It is important to put arrangements in place so that others can make decisions for us should the need arise. You do that through a lasting power of attorney (LPA).

What is an LPA?

A lasting power of attorney (LPA) is a legal document that enables you to choose one or more people to make decisions on your behalf. There are two different types of LPA:

Personal welfare LPA: enables decisions to be made about health and welfare, such as where you live, who provides day-to-day care, medical treatment etc.

Property and affairs LPA: enables decisions to be made about financial affairs such as selling your house, managing your bank account, paying bills etc.

The two LPAs are completely separate: you can choose to make one or both, depending on your circumstances and needs. Brief details on each are set out on the following pages.

Are LPAs new?

They were introduced in October 2007 (under the Mental Capacity Act 2005), replacing the traditional enduring power of attorney (EPA). They are more complex to create than EPAs.

If you have an existing EPA, it will remain valid. Your attorney(s) will still be able to take care of your property and affairs but they will not be able to make decisions about health and welfare. If you would like to be able to delegate decision-making powers over your personal welfare, you should consider making a personal welfare LPA.

If I wish to have both LPAs, do my attorneys have to be the same?

No, it is up to you. You may appoint the same set of attorneys for both LPAs, or different ones. If you are appointing different attorneys, it is essential to choose people who get on with each other. This will avoid the potential for disagreements about your care. For example, if the welfare attorneys choose a care home but the property and financial attorneys disagree with the choice, they could refuse to pay.

How do I set up and use an LPA?

The process is lengthy and complex. When you make an LPA, it has to be registered with the Office of the Public Guardian before it can be used, and a registration fee must be paid. Every LPA needs one person (referred to as a 'certificate provider') to confirm that you are capable of signing the document and understanding the implications of it.

We strongly recommend our clients to seek expert professional advice in setting up these important documents. A meeting can be arranged at which we can explain all the issues, discuss your particular needs and assist in completing the forms.

Do I need to tell anyone about my LPA?

If you wish, you may nominate people who should be informed if and when the LPA comes into force. These people would be notified when the LPA is registered and they have an opportunity to object to the registration.

To arrange an appointment

Please telephone 01242 514000 and ask to speak to one of our expert and helpful probate lawyers to arrange an appointment. You should allow approximately 1.5 hours. We may arrange home or hospital visits if you are not able to travel to us. There are several steps leading into our buildings. If access is likely to be a problem, please let us know.

Personal welfare LPAs

What is a personal welfare LPA?

It is a document you (the donor) can make, authorising one or more people (attorneys) to make decisions on your behalf should you become unable to make them for yourself.

What decisions can welfare attorney(s) make?

They can make decisions on all aspects of your personal welfare, for example where you are to live, people you are to have contact with and whether to give or refuse consent to medical treatment. You can restrict these powers within the LPA if you wish. This may be advisable if you have strong wishes about any particular aspect of your care. Your attorney(s) will be legally bound by whatever is in your best interests.

When can a welfare LPA be used?

A welfare LPA can only come into force if and when you lack the mental capacity to make such decisions for yourself.

Can welfare attorneys make decisions on 'life sustaining' treatment?

They can deal with the very specific decision as to whether or not you receive 'life sustaining' treatment. You can tell your attorney(s) of your own views and wishes (which can be set out in the LPA). If you want them to be able to make such decisions, you must expressly give this power in the LPA, otherwise the decisions will be made by doctors or other health professionals.

How does an LPA differ from a 'living will'?

A 'living will', or advance directive, is a document that sets out specific circumstances in which you would not want your life to be prolonged. Although they have been widely used and accepted, 'living wills' are not legal documents and are not legally binding. They are an expression of your wishes and are lodged with your GP.

By comparison, an LPA allows you (if you wish) to give your attorney(s) authority to make decisions based on whatever you have set out in the LPA. Unlike a 'living will', an LPA does not need to specify particular circumstances so it provides for a greater number of eventualities.

What if I change my mind?

You may revoke this power at any time, as long as you have capacity to do so.

Who should I appoint?

When setting up a welfare LPA, the most important consideration is who you are going to appoint as your attorney(s). You must have complete trust in the individual/s to make decisions that you would be happy with if you were able to make them for yourself.

What questions do I need to consider before making a welfare LPA?

This is a short checklist of things you might want to think about before your meeting with us.

- Who would you like to appoint as your attorney(s)? You will probably want to choose people that you trust to carry out your wishes. You may also want to bear in mind their age, and choose someone from a younger generation.
- You may wish to consider whether you would also like to appoint a replacement attorney in case the people you have chosen are, for any reason, unable to act.
- You should consider whether your attorneys get on with one another, to ensure that decisions can be taken as quickly and effectively as possible.
- You should consider carefully whether you would like anyone to be informed in the event that your LPA is registered. These need not necessarily be members of your family, but could be good friends that you trust. If you decide not to nominate anyone to be notified, you must think carefully about the implications of this.
- You may wish to consider whether you would like to put any restrictions on your attorney(s) as to what decisions they may or may not be able to make on your behalf or give them guidance on anything you have particular concerns about.

Property & affairs LPAs

Do I need a property LPA?

If you already have an enduring power of attorney (EPA) then you probably don't need to create one of these. However, if your circumstances have changed since you signed your EPA, you may wish to consider making a property and affairs LPA.

When can a property LPA be used?

It is up to you. You can specify that it can only be used in the event that you lose your mental capacity. If you prefer, it can be used at any time. This might be useful if you have the capacity to be able to look after your affairs but are finding it burdensome or you need someone to act on your behalf while you are away.

What decisions can property attorney(s) make?

They can make any decisions relating to your property such as selling or mortgaging it. They can also make decisions about money and investments such as your bank accounts, shares and pension. If you wish, you can express instructions or preferences in your LPA. For example you could instruct your attorney only to deal with your investments and not with your property.

What happens if I lose capacity and have no property LPA?

If you have significant assets, then the court may appoint a 'deputy' to take care of your affairs. This won't necessarily be someone you would appoint yourself and the costs of appointment would have to be paid out of your estate. Whoever is appointed as your deputy will be subject to stricter supervision by the court than someone you appoint as your attorney.

Do the attorneys act together or independently?

You can specify that your attorneys have to act together at all times, independently at all times, or that they can act together on some matters and independently on others. It is entirely up to you how you wish them to act and we will, of course, be able to advise you at our meeting.

Can anyone other than my attorney(s) make decisions for me?

No, as a general rule, attorneys cannot delegate their duties. However, if it is a purely administrative matter (something you wouldn't expect an attorney to do personally), or if there are unforeseen circumstances, then an attorney can ask someone to act in his place.

Checklist

These are some of the things you may wish to consider before making an LPA.

- Who would you like to appoint as your attorney(s)? You will probably want to choose people that you trust to carry out your wishes. You may also want to bear in mind their age, and choose someone from a younger generation.
- You may wish to consider whether you would also like to appoint a replacement attorney in case the people you have chosen are, for any reason, unable to act.
- You should consider whether your attorneys get on with one another, to ensure that decisions can be taken as quickly and effectively as possible.
- You should consider carefully whether you would like anyone to be informed in the event that your LPA is registered. These need not necessarily be members of your family, but could be good friends that you trust.
- You may wish to consider whether you would like to express any instructions or preferences for your attorney(s) to consider as to what decisions they may or may not be able to make on your behalf, or give them guidance on aspects that you are concerned about.

Contact

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