

lasting power of attorney fact sheet

Why make a Lasting Power of Attorney

Everybody who makes a Will should also make a Lasting Power of Attorney (LPA). A Lasting Power of Attorney (an 'LPA') is a document that you sign to appoint somebody to act for you should you for any reason become unable to manage your own financial affairs.

If you care enough about what happens to your assets after you die, you ought to care even more about keeping them safe whilst you are alive.

If you **do not** have a Lasting Power of Attorney, then if for any reason you suddenly become unable to manage your own affairs, e.g.

- I. You suffer an accident and are confined to bed or hospital
- II. You suffer a more serious accident which permanently incapacitates you
- III. You become mentally incapacitated as a result of old age or for some other reason

... then the **only** way that your financial affairs can be managed is by an application (by a relative or other person close to you) to the Court of Protection. This can take up to 10 months and cost up to £1,400 to process – during which time your finances could be seriously damaged – and the person authorised to handle your affairs on your behalf may not be the person you would have chosen, but may even be selected from a panel of deputies such as someone from the local authority or a solicitor, who can (and will) charge every time he/she acts for you.

If you have a Lasting Power of Attorney, your chosen representatives can act for you straight away if you become unable to handle your own affairs or if you become mentally incapacitated.

Note that you must be mentally capable to make an LPA. Therefore, just like a Will, **if you don't have one then by the time you really need one it's too late.**

Get your paperwork right

This is the normal process that you go through when you make an LPA: -

- a. You decide and specify under what circumstances the LPA is to start – e.g:-
 - EITHER straight away
 - OR if for any reason you cannot handle your own affairs
 - OR if you become mentally incapable
 - OR for some other specified reason
- b. You create and print the LPA, and sign it (or have it signed for you) in the presence of a witness.
- c. You get your Attorney(s) and a 'Certificate Provider' (see next page) to sign it.
- d. You or your Attorney(s) register the LPA at the Office of the Public Guardian – who will stamp it on every page. This can be done at any time right up until the LPA is needed.
- e. You store it somewhere safe.
- f. If the 'conditions' (if any) you specified in step 1 above come to pass, then the Attorney(s) you have appointed can act for you straight away: they take the LPA document to your bank, etc. (plus any proof that the 'conditions' have been met) and use it as their 'authority to act'.
- g. If you die, the LPA ceases and your Will 'takes over'.

Credit Control

A Lasting Power of Attorney (LPA) is a bit like a normal Power of Attorney, except that it continues if you become mentally incapacitated (a Power of Attorney doesn't).

In particular, you can **specify** any or all of the following in a Lasting Power of Attorney: -

- a. The identity of your **Attorney(s)** and, if you appoint more than one, whether they must act all together ('Together') or whether they can act separately ('Together and Independently') or a combination of the two.
- b. You can specify replacement Attorney(s), in case one or more of your original appointed Attorneys cannot or refuses to act – plus (if you want) conditions regarding who is to replace whom, etc.
- c. What restrictions are to be placed on your Attorney(s) (e.g. they may not act while you are able to conduct your own affairs, or they may not act unless you are mentally incapacitated, or they may not act without the written consent of a specified relative on specified matters, or they can only sign cheques for you, or they can only deal with matters of less than a specified amount of money – e.g. £1,000, or they may deal only with your financial affairs and not your property, or they may deal only with certain specified properties of yours, or they may deal only with certain bank accounts, etc.)
- d. You can offer your Attorney(s) guidance on how they are to act (which they are not legally obliged to follow but will still give them an idea of how to act for you).
- e. You can specify what fees (if any) your Attorney(s) may be paid from your estate (note that by law they are allowed to claim expenses).
- f. As an important safeguard you can specify people who must be notified if and when an application to register the LPA is made. If they think that something is wrong, these people can then object to the registration of the LPA (i.e. they can stop it from being used).
- g. As another safeguard, a 'Certificate Provider' must also sign the LPA to confirm that you were mentally capable when you made it and that you have not been pressurised into making it. Such a person could be your doctor, or somebody who's known you for at least the past 2 years (more details are provided in the Instructions document that you get in your LPA package). Note that if you take up the first safeguard mentioned above (people to be notified) then one 'Certificate Provider' is required. If you don't, then two 'Certificate Providers' are required.

You will see that the scope for both what you can do and the protection that you can add into the LPA is pretty wide! It's certainly more flexible and less open to abuse than the old 'Enduring Power of Attorney' that it replaced on October 1st 2007.

Once you have made (and signed/witnessed) your LPA, and it has been registered at the Office of the Public Guardian, should it become necessary your Attorney(s) can start to act straight away unless you have placed a **restriction** specifying otherwise (note that we recommend the restriction which makes the LPA only valid if you are unable to conduct your own affairs).

Finally, please note that, just like a Will, an LPA created is valid for immovable assets (i.e. property) in England and Wales only and movable assets (e.g. bank accounts) in some other countries. We recommend that if you have immovable assets outside England and Wales you should make the equivalent of an LPA in the country(s) concerned in addition to the one in this country.

The contents of this document should not be regarded as constituting legal advice and should not be relied upon as such. You should seek specific legal advice in respect of all legal issues or problems.

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