



Lasting Powers of Attorney



What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that enables an individual (known as a donor) to appoint one or more people (known as attorneys) to make decisions on their behalf. Unlike a General Power of Attorney, which is automatically revoked by mental incapacity (just at the time when most needed), an LPA continues to take effect after the incapacity of the donor.

LPAs were introduced by the Mental Capacity Act 2005 and have replaced the old Enduring Powers of Attorney (EPA). However EPAs prepared prior to 1 October 2007 remain valid and capable of registration should the donor lose mental capacity. An EPA enabled attorneys to deal with financial affairs only, whereas the new LPAs enable attorneys to not only look after a person's financial affairs but also make decisions about issues in relation to their health and welfare.

Types of Lasting Power of Attorney

It will be necessary to make separate LPAs, one dealing with 'property and financial affairs' and the other to cover 'health and welfare' decisions as follows:-

Property and Financial Affairs LPA

Attorneys can make decisions about paying bills, dealing with the bank, investing money, collecting benefits, pensions or allowances, dealing with your tax affairs and buying and selling properties on your behalf. Essentially attorneys will be able to do anything with your finances and property which you could have done personally. The only thing attorneys will not be able to have anything to do with is your Will. Your Will is a document personal to you and only you will be able to create the document or make changes to it, providing you have capacity.



This LPA can be used at your direction while mentally capable and also by the attorneys if you lack capacity to make these decisions.

Health and Welfare LPA

Attorneys can make decisions about giving or refusing consent to particular types of healthcare on your behalf, including medical and life sustaining treatment, staying in your own home with help and support from care providers or helping you move into residential housing or choosing the right care home, or day to day matters such as diet or dress.

This LPA can only be used when you no longer have the mental capacity to make decisions affecting your health and welfare. All the time you are mentally capable to make your own health and welfare decisions, your attorneys cannot act on your behalf with this LPA.

Appointment of Attorneys

An attorney must be over 18, must not be bankrupt, have mental capacity and be willing to take on the role. You may appoint anyone you trust to act as your attorney and you need to



be sure that they know you well enough to make decisions on your behalf. They must make all decisions in your best interests and must follow certain principles set out in the Mental Capacity Act aimed at making sure you are encouraged to make your own decisions where possible. If attorneys are found not to be acting in your best interests the Court of Protection can remove attorneys as well as hold them accountable.

If you have more than one attorney you can choose whether you would like them to agree on all decisions together or independently of each other. You can also appoint replacement attorneys in the event of your main attorney not being able to act for you.

You can tell your attorneys what they must do when acting on your behalf by inserting instructions into the LPA or state your preferences about what you would like your attorneys to think about when making decisions for you.

If you cannot think of anyone suitable to act as your attorney, then the directors of The Owen Kenny Partnership Ltd can act as professional attorneys for you to ensure your property and financial affairs and health and welfare needs are looked after. Professional attorneys have to adhere to a much higher standard of care.

Making a Lasting Power of Attorney

At the time the donor signs the paperwork, they must be capable of understanding its nature and effect for it to be valid. A person known as 'the certificate provider' is someone who has known you for at least two years or a professional person such as a solicitor or doctor. They must sign the LPA to confirm that they have discussed it with you (usually on your own) and they can state that you understand the purpose and scope of the LPA, that no undue pressure or fraud is involved in the decision to make an LPA and there are no other factors preventing the creation of the LPA.

The attorneys must also sign the LPAs stating that they understand their duties and obligations. They will be sent their part to sign in the post.

LPAs must be registered at the Office of the Public Guardian before they can be used by your attorneys and the registration process takes about six to eight weeks.

As you can see an LPA can take some time to finalise after you have signed it. Signatures will need to be obtained from the certificate provider and attorneys before it can be sent to the Office of the Public Guardian for registration. This is why we recommend putting LPAs in place now to ensure your property and financial affairs and health and welfare can be taken care of by your attorneys should they need to in the future. This will lessen the stress for family members at what could be an emotionally difficult time for them.

Why make a Lasting Power of Attorney?

The benefits of drawing up a Will are widely recognised. In doing so, you make provision for the winding up of your affairs after death and you have peace of mind, knowing that you have selected the people whom you would like to administer your estate.

Similar to why people make a Will, an LPA allows you the opportunity to make provision in advance for the possibility of you becoming incapable of managing your own financial and welfare affairs during your lifetime. This becomes increasingly important as the risk of supervening mental incapacity grows through longevity, illness or accident. If you do not have an LPA in place the Court of Protection has the power to appoint people to manage your affairs. The procedure can be costly and time-consuming and more importantly you will lose the right to choose who will look after your affairs, in the event that you are unable to do so.

Retaining control of your affairs

Even though you have registered LPAs in place, attorneys do not have to act for you straightaway. We hold your original LPAs for you, free of charge, and do not release any original LPAs or certified copies (a certified copy is proof that a registered LPA exists - in most situations, it can be used just like the original Lasting Power of Attorney) to attorneys without:

- Your written consent;
- A face to face meeting with you informing us you would like your attorneys to have a certified copy so that they can assist with your affairs; and
- A letter from your GP with evidence that you are mentally incapable of managing your affairs and they recommend that the attorney now uses the LPAs to make decisions on your behalf.

“We visit clients in hospitals, residential homes and nursing care homes as well as their own homes.”

Our service

We deal with all aspects of Private Client work including Wills, Lasting Powers of Attorney and Probate. The nature of the work we do requires an empathetic and understanding approach to the needs of our clients, many of whom are elderly or bereaved.

Our dedicated team will provide you with the support and the legal advice that you need.

Our other services

Family Law • Conveyancing
Civil Litigation • Commercial Property

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For more information on how we can help you, visit www.owenkenny.co.uk