

HEWITSONS

LASTING POWERS OF ATTORNEY



What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document enabling an adult with the requisite level of understanding (the Donor) to choose another person or persons (the Attorney or Attorneys) to make decisions on his behalf.

Is there more than one type of LPA?

Yes, there are two types of LPA.

- A Property and Financial Affairs LPA enables the Attorneys to make decisions about the Donor's finances. The Attorneys' responsibilities may include ongoing tasks such as operating bank accounts and dealing with investments, and 'one-off' tasks such as selling the Donor's house. The Attorneys' role will depend on the Donor's circumstances and may change over time to reflect the Donor's needs.
- A Health and Welfare LPA enables the Attorneys to make decisions about the Donor's health and welfare, but only if the Donor lacks the capacity to make those decisions himself. The Attorneys' responsibilities may include making decisions about where the Donor lives, the Donor's day to day care and medical treatment. The LPA can authorise the Attorneys to give or refuse consent to life-sustaining treatment on the Donor's behalf.

A Donor may choose to sign either or both types of LPA; they are separate documents. A Donor who chooses to sign both can appoint the same, or entirely different, people as Attorneys in each LPA. Sometimes those with the skills to manage the Donor's financial affairs may not be best suited to making health and welfare decisions and vice versa.

What are an Attorney's duties?

Attorneys under an LPA must always act in the best interests of the Donor. They must have regard to guidance in the Mental Capacity Act Code of Practice.

Who can be an Attorney?

Attorneys must be 18 or over, and mentally capable of making decisions for the Donor. In the case of a Property and Financial Affairs LPA they must not be bankrupt or subject to a Debt Relief Order. Often family members are the obvious choice. Sometimes friends are chosen, or perhaps a professional person such as a Solicitor or Accountant.

An LPA is an important document which enables the Attorneys to make decisions as if they were the Donor, subject to certain limitations. It is therefore vital that great care is taken in the choice of Attorneys. They should be people whom the Donor trusts completely to act in his best interests into the future.



If more than one Attorney is appointed, do they have to act together?

No. If more than one Attorney is chosen, the Donor must decide whether:

- they can each act on their own, or
- they have to act together, or
- they must act together in relation to certain matters but can act individually in relation to others.

What if an Attorney becomes unable to act?

The Donor can name a replacement attorney (or more than one) in the LPA, to act in the event of an Attorney becoming unable to act.

Who needs to sign the LPA?

The LPA needs to be signed by:

- the Donor, and
- the Attorneys (and any replacement Attorneys), and
- a person known as a Certificate Provider who certifies, to the best of his or her belief, that the Donor understands the nature and effect of the LPA and is not under any pressure to sign it.

When we are advising a Donor on the creation of an LPA, we can usually act as Certificate Provider.

When can the LPA be used?

Once signed by all who need to sign, an LPA must be registered with the Office of the Public Guardian (the OPG) before it can be used. A registration fee is payable to the OPG.

The registration process takes at least 4 weeks due to OPG requirements. In practice it can take 2 or 3 months, as a result of the OPG's workload.

Our advice is usually to register the LPA straightaway, even if it is not intended for immediate use, so that it is available for use if needed.

Once a Property and Financial Affairs LPA has been registered, the Attorneys can (unless the LPA states otherwise) start to help the Donor with financial matters even when the Donor has the capacity to make decisions himself.

However, in those circumstances the Attorneys should only act if the Donor has asked them to, and they should consult with the Donor on the decisions they are making. The Attorneys can also act (or continue to act) for the Donor if he loses capacity and becomes incapable of making his own decisions.

By contrast, once a Health and Welfare LPA has been registered, the Attorneys can only make health and welfare decisions on the Donor's behalf if the Donor has lost the capacity to make those decisions for himself.

When should an LPA be considered?

Just as everyone should have a Will, and keep it up to date, it is wise to consider signing both types of LPA as prudent forward planning, so that the documents are in place should they ever be needed. Having LPAs in place will help to ensure that matters run as smoothly as possible for both the Donor, and those close to the Donor, in the event of help being required in the future.

How can we help?

Signing an LPA is a significant step and all the implications should be considered. We can deal with the preparation and registration of LPAs and provide specialist advice on:

- the nature and effect of an LPA
- the role of an Attorney and the form of their appointment
- the scope of the Attorney's authority and the possibility of including preferences and instructions in the LPA
- the registration procedure

If a person has an Enduring Power of Attorney (EPA) is it still valid?

LPAs came into effect on 1 October 2007. Their predecessor was the EPA. No new EPAs can be created after 1 October 2007, but any EPA in force at that date remains valid and capable of use. However, EPAs only relate to the Donor's financial affairs, not to health and welfare matters. We therefore recommend that those with EPAs consider whether to put in place a Health and Welfare LPA (and also that they review the EPA to check they are still happy with it).

What happens if someone does not have an LPA or EPA and loses capacity?

If a person does not have an LPA or an EPA and becomes incapable of managing his affairs, someone must make an application to the Court to be appointed a Deputy, in order to manage the affairs of that person. This is a lengthy and involved process which can prove costly. In such circumstances, the person who lacks capacity has not exercised a choice over the person who manages his affairs into the future.

Can an LPA or EPA be cancelled once it is made?

An LPA or an EPA can be cancelled while the Donor has capacity.

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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

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