



Lasting Powers of Attorney

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Powers of Attorney

Lasting powers of attorney (LPAs) are documents where you can appoint people that you trust to make decisions about your financial affairs or to make decisions about your health and welfare.

Property and financial affairs

A property and financial affairs LPA allows your attorneys to make financial decisions on your behalf. This would include the day to day running of your bank accounts, paying bills, claiming benefits, making small gifts and selling your home, if needed.

Your attorneys can act on your behalf even if you are still able to manage your own finances. This is often the case if you have a physical disability so find it difficult to get out of the house, sign cheques or use the telephone.

Health and personal welfare

A health and welfare LPA can only be used if you cannot make decisions yourself. It enables your attorneys to make decisions about your day to day well-being. This can include decisions about where you should live, access to medical records and granting consent to medical treatment. Your attorneys are able to refuse medical treatment on your behalf. If you wish, this can extend to refusing life-sustaining treatment.

Who can be my attorneys?

Attorneys can be anyone over the age of 18 who has full mental capacity and is not

an interim or undischarged bankrupt. If you appoint a spouse or civil partner, the appointment ends should you divorce or annul a civil partnership.

The most important consideration when appointing an attorney is to choose someone you trust implicitly. LPAs are powerful documents as your attorney can have full control of your assets and all aspects of your welfare. A spouse or partner is an obvious choice but you should consider additional attorneys, perhaps someone from a younger generation.

How can my attorneys act?

If you do appoint more than one attorney you need to decide how they should act.

1. You can appoint your attorneys 'jointly'. This would mean that they all need to agree on all decisions being made and all sign any cheques or papers. This often sounds like a good idea to ensure that all attorneys agree with the decisions being made. There are a number of problems with joint appointments. If one attorney is in hospital or on holiday they would not be able to sign any papers so no decisions can be made. If one of the attorneys die or loses mental capacity, decisions cannot be made so the document becomes useless. The remaining attorneys cannot act themselves as this type of appoint is 'all or nothing'.
2. You can appoint attorneys 'jointly and severally'. This means that they can act

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Lasting Powers of Attorney

“Working with them feels relaxed and comfortable and they all work together to a high standard in which the client comes first.”

Chambers UK

jointly as detailed above, but they can also act independently of one another. Often one attorney takes the lead, usually a spouse or the most local attorney, and the others take a back seat and step in if needed, for example if the other is on holiday or unable to act for any reason. This means that as long as there is one attorney capable of acting the document will continue.

3. The final option is to appoint attorneys jointly in some respects and jointly in severally in others so being a hybrid of the two options. An example of this would be to state that the attorneys are appointed jointly should they need to sell your home and jointly and severally in all other respects. The same dangers of a joint appointment would apply to those decisions that are to be made jointly.

Registration

LPAs have to be registered with the Office of the Public Guardian before your attorneys can act. The registration process can take a few months, so early registration ensures that there are no long delays if your attorneys need to make immediate decisions – especially those relating to medical emergencies.

Planning ahead

It is a sad fact that one in three people over 65 will develop dementia. Often by the time someone is diagnosed with dementia or Alzheimer's they do not have sufficient mental capacity to prepare an LPA.

If this is the case an application needs to be made to the Court of Protection. This is a lengthy process which is more expensive and onerous for your family.

LPAs are not just for the elderly. Anyone could have an accident and lose capacity so waiting until you think that the document may be needed is a risky strategy. LPAs should be seen as an insurance policy. You pay for car and home insurance year on year and for the vast majority of people you never make a claim. With an LPA, there is a one off cost for a lifetime of cover.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.