

What are Lasting Powers of Attorney?

Lasting Powers of Attorneys (LPAs) are legal documents in which you permit another person or persons to make decisions on your behalf in the event that you lose the ability to do so yourself.

There are two types of LPA, a Financial Decisions LPA and a Health and Care Decisions LPA. The Financial Decisions LPA permits your attorney(s) to deal with your property and financial affairs. This can include buying and selling property, dealing with investments and your tax affairs. The Health and Care Decisions LPA permits your attorney(s) to make decisions in relation to your health and welfare. This includes decisions such as what you eat, what you wear and how you spend your days. It can also cover whether or not you consent to life sustaining treatment.



Why should I make an LPA?

If you lose mental capacity without having a Financial Decisions LPA in place, your assets would effectively be 'frozen'. You can no longer make decisions and nobody is authorised to do so on your behalf. If this happens, someone would have to apply to the Court of Protection to be appointed as your Deputy to be able to manage your affairs. This can be a time consuming and expensive process, often taking several months before an appointment is made.

If you lose mental capacity without having a Health and Care decisions LPA in place, other people would have to make these decisions for you. They would have to decide what would be in your best interests and this isn't always an easy decision to take. Putting in place an LPA ensures that the people who know you best and whom you trust are the people making these personal decisions.

You should view your LPA as a form of insurance policy. It is in place for a 'rainy day' that may never come but at least you are prepared and ready should the need arise.



Who should be my attorney?

Attorneys must be 18 or over and should be someone you trust to deal with your affairs. It is advisable (though not compulsory) to appoint someone with the necessary skills to manage your affairs. In the case of your Financial Decisions LPA, you may wish to appoint someone with professional expertise, such as your financial advisor or solicitor. The important thing however is that your attorney is someone you can trust. They must appreciate the importance of the role and be willing to accept such responsibility. Often people choose to appoint their spouse and their children as their attorneys, particularly in the case of a Health and Care Decisions LPA, as this relates to very personal decisions.

You may appoint more than one attorney and you can choose the basis on which they act. You can direct that they act jointly, so that they take all decisions together. Alternatively, you may wish for your attorneys to act together or individually, as they choose, or you may want your attorneys to act jointly for some decisions and independently for others.

Creating an LPA

You must be at least 18 years old to create an LPA and it must be created on the standard form provided by the Office of the Public Guardian (OPG). We can prepare these forms for you and guide you through all the various questions and issues that may arise when doing so. You can do this yourself but it can be a complicated process and our role is to ensure everything runs smoothly and without problem.

The LPA must also be signed by a person known as a Certificate Provider. This is someone independent who can confirm that you understand what you are doing by granting the power and that you are under no pressure to give it. The certificate provider must be someone who:

- Has known you personally for at least two years; or
- Has the professional skills and expertise to judge whether you understand what you are doing and are not being forced to make the LPA, for example a doctor or lawyer. A solicitor at Kingsley Napley may be able to act as your certificate provider.

We can arrange a signing meeting for you at our offices, if you wish, to ensure that the documents are executed correctly.

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Registration

You do not have to register your LPAs straight away, but they will not be effective until they are registered at the OPG. Currently, registration can take up to three months. We therefore recommend that you register your LPAs as soon as they have been prepared, to ensure that your chosen attorney(s) can start acting for you straight away in the event that you lose capacity. The OPG charges a registration fee of £82 per LPA (as at April 2018).

The team

For further information about Lasting Powers of Attorney please contact a member of the team.



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