



Partner & Solicitor

LASTING POWER OF ATTORNEY

the facts and process explained

BY KATHERINE MILLMAN

A Lasting Power of Attorney (LPA) enables an adult (the donor) to appoint another person(s) (their attorney) to act on their behalf, following the principles of the Mental Capacity Act 2005. This means that the Attorney will be able to act even if the Donor subsequently loses mental capacity. This has replaced the previous Enduring Power of Attorney (EPA).

Unlike EPA's, a person can choose to delegate decisions affecting their personal welfare - including healthcare and medical treatment decisions - as well as decisions concerning their property and financial matters to their attorneys

There are 2 separate documents, one for property and affairs and one for personal welfare. Both LPA forms must include information which must be read by the donor, certificate provider and attorney.

The LPA must be registered with the Office of the Public Guardian before it can be used. It can be registered anytime after it has been completed and signed by all the relevant parties. A property and affairs LPA can be used while the donor still has mental capacity, unless it contains a condition or restriction preventing this. Whilst the personal welfare LPA can only be used when the donor no longer has mental capacity to make the particular decision affecting his or her health or personal welfare.

If a person at the time, is unable to make a decision for themselves, because of an impairment of, or the disturbance of, the mind or brain, it's important to put LPAs in place like insurance so that if a person suffers from a stroke or is diagnosed with dementia or other similar illness the documents are available to be used. Once a person has lost capacity they can no longer put an LPA in place.

It is important that when choosing an attorney/s that you choose someone who is trustworthy. The appointment of a sole attorney, whether this be for a property and affairs LPA or a personal welfare LPA, may provide greater opportunity for abuse and exploitation than appointing more than one attorney. It is possible to appoint professional attorneys to look after your affairs but would be subject to professional charges.

It is important to include named persons to be notified when the LPA is to be registered, this is to safeguard you because if you have lost mental capacity at the time of registration, you will be relying on these people to raise concerns, if necessary.

Once the LPA is registered, certain basic information such as yours and your attorney's addresses and dates of birth will be available to anyone who applies to search the register. You can also give your Attorney(s) the power to make decisions about day-to-day aspects of your personal welfare, such as your diet, your dress, or your daily routine. It is up to you which of these decisions you want to allow your Attorney to make.

This type of LPA does not allow the person(s) you have chosen (your Attorney) to make decisions about your property and financial affairs. If you would like someone to be able to make property and financial affairs decisions on your behalf you will need to make a property and financial affairs LPA.

In this LPA you can include restrictions and guidance to your Attorneys. Restrictions are legally binding and must be followed, however, they must be able to work in practice or the application to register the LPA will be rejected. Guidance is not legally binding and tends to include guidance on where you might wish to live, your diet and exercise regime. If you leave these boxes blank, then your Attorneys will be able to make all decisions in respect of your health and welfare.

Your Attorneys will only be able to make decisions that are in your best interests.

- 1. Howard and Over's costs for preparing a Lasting Power of Attorney are £350 for one/£500 for two/£800+VAT for four plus VAT (currently 20%) to include dealing with the registration process.**
- 2. Where we are writing a will for you at the same time as preparing an LPA, a discount will apply to our overall fees. Please ask at the time of making an appointment.**
- 3. The Court of Protection may charge a fee of £41 or £82 for the registration of each LPA**

Please contact Howard & Over if you wish to discuss the contents of this factsheet in more detail.

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