

Lasting Power of Attorney

Frequently Asked Questions

What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document that enables a person you trust, such as a family member or otherwise, to make important decisions about your health and welfare and/or your financial affairs on your behalf, should you be unable to make these decisions due to the loss of mental capacity.

Why should I make a Lasting Power of Attorney?

It is important that you set up a Lasting Power of Attorney sooner rather than later, and while you are still mentally capable of doing so.



If you are injured or develop an illness that may leave you mentally incapacitated and you do not have a Lasting Power of Attorney in place, you run the risk of leaving all decisions about your care and what medical treatment you should receive to your health professionals. Depending upon the circumstances, this could be in conflict with what you or your family would want to happen and therefore, in the worst case scenario, would have the effect of leaving all decisions about your care and medical treatment to your health professionals.

Further, in the absence of a Lasting Power of Attorney, there may be difficulties in others obtaining access to your financial affairs on your behalf.



The Government is urging those in their 20's and 30's to think about creating Lasting Power of Attorney's with the launch of a "planning for the future" campaign.

Those who play contact sports or enjoy adventure holidays should consider creating a Lasting Power of Attorney as a way of ensuring

their best interests are upheld and that their family can take control of their finances.

Can you appoint more than one person to have Power of Attorney?

You can have more than one attorney but for administrative ease we suggest that you have no more than four. You can also appoint replacement attorneys.

Can I choose when a Lasting Power of Attorney comes into effect?

Yes, in a property and financial affairs LPA you can choose whether your Lasting Power of Attorney can be used before you lose mental capacity or stipulate that it can only come into effect once you lose the capacity to deal with finances.



In relation to a Health and Welfare LPA the law stipulates that your attorneys will only have the authority to make decisions on your behalf once you have lost mental capacity.

Are there different types of Lasting Power of Attorney?

Yes there are. There are two different types of Lasting Power of Attorney. One deals with property and finances, whilst the other deals with health and welfare.

A Lasting Power of Attorney dealing with property and financial matters is used to pass authority over to a family member or



someone you trust so they can make decisions for you and on your behalf about financial issues. They may then be allowed to make decisions regarding selling your house, dealing with any benefits, your bank accounts or

investments on your behalf. They would also be allowed to pay bills on your behalf.

The other type of Lasting Power of Attorney is one that deals with health and welfare decisions, such as where you live, whether in care or otherwise, what you can eat and even the clothes you wear.

The major difference between the two Lasting Power of Attorney's is that the financial affairs Lasting Power of Attorney can be used whilst the person still has the mental capacity to deal with these affairs themselves – if they chose so. The health and welfare Lasting Power of Attorney only comes into effect when the person loses that capacity.

What sort of finances can be paid by a person with Power of Attorney?

Your attorneys can deal with all aspects of your property and financial affairs using the Lasting Power of Attorney unless you expressly exclude them dealing with a particular asset. For

example if you have a particularly valuable art collection you may wish to state an instruction or preference that they take professional valuation advice before they act in relation to the collection. An



instruction must be followed, whilst a preference is just that. You may only want your assets to be invested in particular types of investment product. Again this is where you would provide either and instruction or stipulate a preference.

There is no right for an attorney to see your Will unless you give permission in the LPA to enable them to do so. They also do not have the right to make or change your Will.

What is the role of the Office of Public Guardian and what might need to be referred to this organisation?

The Office of the Public Guardian is an executive agency who protect the interests of those who lack capacity. They deal with the registration of the LPA's and a major part of their function is to centralise records of dealings with and protection of the vulnerable. The OPG operate a register of LPA's and if an original

is lost then further copies can be issued. As part of their safeguarding role if anyone has any concerns in relation to an attorneys actions or if they believe that the donor is in some way vulnerable then these concerns can be reported to the OPG and they will make enquiries and, in the most serious cases, refer the matter to the Court of Protection to deal with.

Wills, Trust & Probate Team

Our Wills, Trusts & Probate specialists are normal, down to earth people and can support you to appoint a Lasting Power of Attorney to ensure that you and your family are protected from any distressing legal battles, as they will be allowed, by law, to look after your best interests immediately following the event you lose the mental capacity to deal with those aspects yourself.

We have fixed fees on most types of work.



Lindsey Rawson -
Head of Wills,
Trust



Stephanie Chung -
Wills, Trusts
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Specialist



Millie Nicholson -
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