

LASTING POWER OF ATTORNEY FACT SHEET

Imagine because of illness or accident you lost the ability to do things like wash yourself in the morning or pay your bills. How do you make sure decisions about your life and your future are the right ones?

English & Welsh Law allows you to make preparations today, whilst you have the capacity to do so. You can ensure you are protected if the time comes when you cannot protect yourself.

What is a Lasting Power of Attorney?

Lasting Power of Attorney (LPA) are legal documents that allow you to nominate people you trust to manage your day to day finances when you are unable to or make decisions for you when you no longer have the capacity to. Any person you give authority to is referred to as your 'Attorney'.

How do I choose a person to be my Attorney?

The magnitude of the 'power' you are granting to your Attorney(s) means it is important that you choose people you trust will have your best interests in mind.

You should consider how much you trust that person, how well they manage their own affairs and how happy you *and* they would be to make decisions for you.

If you are worried about abuse of power, appointing more than one Attorney can prevent this.

You can place legally binding conditions on your Attorney's powers and limit the scope of authority they have within the LPAs. However, it is important to note that any decisions affected by these restrictions may still need to be made and so your Attorney(s) would need to ask for authority from the Court of Protection, thus causing a potential delay.

What are the different types of LPA?

There are two Lasting Power of Attorney: Health & Welfare and Property & Financial Affairs.

LPAs must be registered with the Office of the Public Guardian to have legal standing. This process can take between 8 and 10 weeks if there are no mistakes. We advise that you register the LPAs as soon as they are completed and then file away until required.



The Property and Financial Affairs LPA

This LPA extends to all decisions regarding your Property and Finances which would include: day to day finances such as paying bills, buying and selling property in your name, running any businesses and making payments for any healthcare. Any person subject to a Debt Relief Order or Bankruptcy cannot be named as an Attorney for this LPA.

Once registered with the Office of the Public Guardian (OPG), the LPA can be used immediately with your permission.

The Health and Welfare LPA

The Health and Welfare allows your Attorney(s) to make decisions about your personal welfare including where you live, how you are cared for and what healthcare you receive.

Once registered with the OPG, it can only be used when you are unable to make your own decisions.

Do I need a LPA?

This decision is entirely yours - BUT - if you do not have LPA's in place, and you lose your capacity to deal with your affairs, then your family would have to apply to the Court of Protection.

This process takes time; is more complicated and expensive than registering LPA's.

Think carefully about putting your LPA in place to protect both yourself and your finances.

DID YOU KNOW?

1 in 3 people will develop dementia¹ but less than 1% of the UK population has an LPA².

How does my Living Will affect my LPA?

The Advance Directive/Living Will can override a Health & Welfare LPA if it is made after and if the LPA does not contain decisions regarding treatment. Likewise, the LPA can override the Advance Directive/Living Will if it expressly extends to lifesaving treatment.

How do I make a LPA?

There are two stages to making your LPA. You will need:

- Agreement from your Attorney(s) that they will act for you as they are required to sign a part of the LPA Form.
- Your Attorney's details.
- Any Replacement Attorney(s) if known/required.
- Someone who can sign to confirm that you understand the significance of your LPA and has known you for 2 years: close friends or a Professional (e.g. GP) can do this (however they may charge).
- Up to 5 people to tell that you are making an LPA. They should know you well and will have the opportunity to raise any concerns.
- Two Independent Witnesses

How do I make my Attorneys work together?

When completing your LPA Form you can decide whether your Attorneys work 'Jointly', 'Jointly and Severally' or 'Jointly for some decisions and severally for others'.

Jointly: Your Attorneys must make all decisions together. If one Attorney does not agree with something, the decision cannot be made on your behalf until they agree.

Jointly & Severally: Your Attorneys can act together or independently for all decisions. You may have one Attorney very closely involved in your Welfare that you trust to make decisions on their own, and another Attorney who is often unavailable i.e. on holiday.

Jointly for some, Severally for others: You can list all the decisions your Attorneys can make together or independently.

Is it important to Register immediately?

You aren't required to, but the longer the LPA is kept after making it and before registering it, the more likely you or your Attorney(s) will need to ensure that the information (for example contact details) is kept up to date. As your LPA cannot be amended during the period between completion and registration you will need to complete a fresh LPA Form.

How do I cancel or revoke the LPA?

- By making a written statement called a 'Deed of Revocation' and sending it to the OPG.
- If you or your Attorney die.
- Your Spouse is named as the Attorney and your Marriage or Civil Partnership ends
- By order of the Court of Protection
- If your Attorney(s) become bankrupt or subject to a Debt Relief Order.

Is an Enduring Power of Attorney the same?

These were replaced by the LPA in October 2007. The Enduring Power of Attorney (EPA) allowed you to nominate Attorneys for Property and Financial Matters only.

Any EPAs made before October 2007 remain valid but your Attorney(s) will need to register the document with the Court of Protection. The Court will rule whether or not you have lost mental capacity before it can be put into effect. Your Attorney(s) must also abide by the principles of The Mental Capacity Act 2005, copies of which can be obtained from Her Majesty's Stationery Office.

We advise you can make a Health & Welfare LPA to run in conjunction with the EPA if it is valid and you have capacity.

What is a Ordinary/General Power of Attorney?

The Ordinary/General Power of Attorney (GPA) allows you to appoint someone to look after your financial affairs for a long period of time for practical reasons. For example you may have had a physical injury from an accident or you going abroad for a long period of time.

The GPA allows your Attorney(s) to deal with all the Financial Affairs. You remain liable for all the actions of your Attorney(s) and so it is very important to ensure that you only appoint someone you implicitly trust.

A GPA will cease if you, as the Donor lose mental capacity. Writing 'CANCELLED' across it or simply tearing it up can also revoke it.

01276 691979

 **michael usher**
wills & estate planning



www.mu-wills.com

84 - 88 High Street, Frimley, Camberley, Surrey, GU16 7JE