

wealth preservation

lasting power of attorney

What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document in which you (the person giving the LPA, also known as the Donor) choose someone (the Attorney) that you trust to make decisions on your behalf about things such as your property and financial affairs, or health and welfare.

An LPA can only be used after it is registered with the Office of the Public Guardian (OPG).

An LPA is a very powerful document, so when choosing your Attorney you need to be confident that you have picked the right person to carry out the tasks involved. Bear in mind that if you lose mental capacity (that is the ability to make decisions for yourself) then you will not be able to monitor what the Attorney is doing on your behalf.

The Types of LPA

There are two different types of LPA are:

- A Property and Financial Affairs LPA
- A Health and Welfare LPA.

The Property and Financial Affairs LPA

A Property and Financial Affairs LPA allows you to choose one or more people to make decisions on your behalf regarding any or all of your property and financial affairs. The Attorney is able to make almost exactly the same kind of decisions that you can make now, to include selling your house.

A Property and Financial Affairs Attorney can manage your finances and property

whilst you still have capacity as well as when you lack capacity.

However, even though your Attorney can act immediately once the LPA has been registered with the OPG, you are not prevented from continuing to deal with your own property and affairs if you wish.

This type of LPA does not allow your Attorney to make decisions about your health and welfare. If you would like someone to be able to make these sort of decisions on your behalf you will need to make a Health and Welfare LPA.

The Health and Welfare LPA

A Health and Welfare LPA allows you to choose one or more people to make decisions on your behalf regarding your personal healthcare and welfare, which could even include giving or refusing consent to life-sustaining treatment.

The Attorney you appoint to make health and welfare decisions will only be able to use this power once the LPA has been registered with the OPG, and when you cannot make the required decision for yourself (for example, if you are unconscious or because of the onset of a condition such as dementia).

This type of LPA does not allow your Attorney to make decisions about your financial affairs. If you would like someone to be able to make these sort of decisions on your behalf you will need to make a Property and Financial Affairs LPA.

Who can make an LPA?

Anyone aged 18 or over, with capacity to

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do so, can make an LPA appointing an Attorney (or more than one Attorney) to make decisions on their behalf. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

The following are the different people involved in making an LPA:

- **Donor:** a Donor is someone who makes an LPA appointing an Attorney to make decisions about his or her health and welfare, property and financial affairs, or both
- **Attorney:** an Attorney is the person you choose and appoint to make decisions on your behalf about your health and welfare, property and financial affairs, or both. It is an **extremely** important role and one that the person chosen has to agree to take on. You can also choose a replacement Attorney to act if your first choice Attorney is ever unable to do so. Someone who is bankrupt cannot be an Attorney
- **People to be told:** in the LPA, you name one or more people to be told when an application is made to register the LPA with the OPG. These people have the right to object to the registration of the LPA if they have concerns about it but have no other part to play with the LPA, and certainly do not have any power to deal with your affairs. Selecting one or more people to be told of an application to register the LPA is one of the key safeguards to protect you
- **Certificate Provider:** a Certificate Provider is a person you must select to confirm that you understand the LPA and that you are not under any pressure

to make it. The Certificate Provider is another important safeguard. The Certificate Provider will either be:

- A professional person such as a Solicitor or GP with particular skills in this area; or, ideally
- Someone you have known for more than two years (but not a family member) such as a friend or neighbour.

Before starting to prepare your LPA, you should gather together the following information in respect of all those people who may be mentioned in it:

- Full name (including any middle names and any previous names)
- Full address (including postcode)
- Telephone number
- Date of birth
- Occupation.

The LPA Form

- In the LPA form itself, you will need to set out your personal details, details of your Attorney(s), and how you want the Attorney(s) to act on your behalf. When choosing more than one Attorney, you will need to appoint them to act either **Jointly, Jointly and Severally** or **Jointly for some decisions and Jointly and Severally for other decisions**. So, what do these phrases mean?
 - Jointly:** this means that **all** Attorneys appointed in the LPA must **always** act together. If **just one** Attorney does not agree with the proposed action then that decision cannot be made. Whilst this might be viewed as a safeguard, it can also cause severe and possibly

insurmountable difficulties. Consider, for example, the difficulty in having a cheque signed to pay the gas bill when the Attorneys live in different parts of the country. Further, if the Attorneys fall out with each other, or one of them dies or loses the capacity to act, then the LPA cannot be used and so would be worthless.

– **Jointly and Severally:** this means that any one Attorney appointed in the LPA can act on their own, or, alternatively, some or all of the Attorneys can choose to act together. This can be useful if one of your chosen Attorneys is not available all of the time or wishes to take a back seat. Also, if one of the Attorneys becomes ill, dies or loses the capacity to act, the LPA can still continue with the remaining Attorney(s) continuing to act.

– **Jointly for some decisions and Jointly and Severally for other decisions:** this is a combination of the two options set out above. For decisions that need to be made **Jointly**, the severe difficulties mentioned above would apply.

- You can place restrictions or conditions on your Attorney, such as a duty to produce annual accounts for checking by a family member or a professional. However, you should bear in mind that the more restrictions, the greater the likelihood that the LPA will be more difficult to use in practice
- You will then need to give details of the people to be told when an application is made to register the LPA. If you choose not to specify anyone in this category

then you will need to have two Certificate Providers instead

- The Certificate Provider must sign to say they have spoken with you and they are happy that you understand the powers you are giving your Attorney and that there has been no fraud or undue pressure on you to make the LPA. As stated above, if you have not specified at least one person to be told when your LPA is to be registered with the OPG, you will need to have two Certificate Providers instead of one
- Everyone you choose as an Attorney will then need to sign to confirm they understand their legal duties, such as the duty, to act in your best interests.

What happens next?

You or your Attorney can register the LPA with the OPG at any time after it has been made. At the time of applying for registration there is a Court fee (currently £120) payable to the OPG, and the people to be told of the application will receive a notice informing them of this. Your Attorney will only be able to make decisions on your behalf after your LPA has been registered with the OPG, and then subject to any restrictions or conditions you have specified on the LPA form, and always in your best interests.

Whilst registration can be delayed until the time when the LPA needs to be used, the registration process takes no less than seven weeks to complete, and possibly longer, and so there will inevitably be a delay in the LPA being used at a time when it is most needed. Early registration is therefore likely to be the best course of action.



If your Attorney registers and then uses your LPA before you would want them to do so, it can always be cancelled by you, so long as you have the mental capacity to do so.

Do I need a Solicitor to make an LPA?

- Whilst you do not have to seek legal advice, Buckles Solicitors LLP have experience of preparing and registering LPAs and so can provide advice on all aspects of it and ensure that the process is a smooth one for you.
- At Buckles, we also have extensive

experience of assessing mental capacity to sign legal documents, which ensures the best possible opportunity for all our clients to sign an LPA no matter their age or infirmity.

- Finally, an LPA is not like a Will which can be amended by you as time passes. If changes need to be made then a whole new LPA is required. Getting it right first time is therefore most important, especially if you intend to delay registration until a later date when any errors may come to light too late. At Buckles, we can help you to get it right first time.

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