

Private Client

Lasting Power of Attorney



When we plan for the future we must consider the possibility of becoming unable to look after our own affairs because of physical or mental incapacity. A Lasting Power of Attorney (LPA) can help in these and other situations.

What is an 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.

LPAs replaced Enduring Powers of Attorney (EPAs) in 2007. Whilst existing EPAs remain valid, no new EPAs can be created.

An LPA must be signed when you are mentally capable of doing so, and can only be used after it is registered with the Office of the Public Guardian (OPG). It is therefore important to consider signing an LPA at the earliest opportunity to avoid delays and difficulties at a time when it needs to be used.

An LPA is a very powerful document, so when choosing an Attorney you need to be confident that you have picked the right person.

Bear in mind that if you lose mental capacity (the ability to make decisions for yourself) then you will not be able to monitor what the Attorney is doing on your behalf.

The two types of LPA are a Property & Financial Affairs LPA, and a Health & Welfare LPA. A Property & Financial Affairs LPA avoids the need for a very time-consuming and expensive Court of Protection application before your assets and money could be accessed in the event of your physical or mental incapacity. A Health & Welfare LPA avoids the situation of doctors and social services making 'best interests' decisions for you in relation to your medical treatment and care in the event of your mental incapacity.

The Property & Financial Affairs LPA

A Property & Financial Affairs LPA allows you to choose one or more Attorneys to make decisions on your behalf regarding your property and financial affairs. The Attorney is able to make almost exactly the same kind of decision that you can make now, for example selling your home.

A Property & Financial Affairs Attorney can manage your finances and property whilst you still have mental capacity as well as when you lack capacity. 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 or financial affairs if you wish.

The Health & Welfare LPA

A Health & Welfare LPA allows you to choose one or more Attorneys to make decisions on your behalf regarding your personal healthcare and welfare, to include where you live, who you have contact with, and giving or refusing consent to life-sustaining treatment.

A Health & Welfare Attorney can only act for you once the LPA has been registered with the OPG and when you cannot make the decision yourself.

Who can make an LPA?

Anyone aged 18 or over, with the mental capacity to do so, can make an LPA. You cannot make an LPA jointly with another person; each person must make his or her own LPA.

The following are the people involved in making an LPA:

Attorney: an Attorney is the person you choose to make decisions on your behalf. 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, or simply appoint more than one Attorney. Someone who is bankrupt cannot be an Attorney for property and financial affairs.

Person to Notify: you can choose to name one or more persons to be notified when an application is made to register the LPA with the OPG. This person has the right to object to the registration of the LPA if they have concerns about it, but do not have any power to deal with your affairs.

Certificate provider: a certificate provider is a person you select to confirm that you understand the LPA and that you are not under any pressure to make it. The certificate provider will either be a professional person such as a solicitor or GP, or someone you have known for more than two years (who is not a family member).

For each person who is to be mentioned in the LPA, you should make a note of their full name, full address, telephone number, date of birth and occupation before attempting to complete the LPA form.

The LPA form

In the LPA form itself, you will need to set out your personal details and details of your Attorney(s). 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 severally for other decisions*. So what do these phrases mean?

Jointly: this means that all the Attorneys must always act together. If just one Attorney does not agree with the proposed decision, it cannot be made. Whilst this might be viewed as a safeguard, it can cause severe difficulties (for example, having a cheque signed when the Attorneys live in different parts of the country, or if the Attorneys fall out with each other or one of them dies then the LPA cannot be used).

Jointly and severally: this means that one Attorney can act on their own, or some or all of the Attorneys can choose to act together. This can be useful if one of your chosen Attorneys wishes to 'take a back seat'. Also, if one of the Attorneys becomes ill, dies or loses the mental capacity to act, the remaining Attorney(s) can continue to act. Note that if one Attorney makes a decision on your behalf, then all of your Attorneys remain fully responsible for any such decision whether or not they were a party to it.

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 difficulties mentioned above would apply.

You can give instructions to your Attorney(s) on how they should act on your behalf, such as a duty to produce annual accounts to a professional. The more instructions there are in the LPA, the more likely it is that it will be more difficult to use in practice.

You can then choose to set out details of the person(s) to notify.

The certificate provider must then sign to say they are happy that you understand the powers you are giving your Attorney(s) and that there has been no pressure on you to make an LPA.

The Attorney(s) will need to sign to confirm they understand their responsibilities, such as acting in your best interests and complying with any instructions in the LPA.

What happens next?

You or your Attorney(s) can register the LPA with the OPG at any time after it has been made. There is a Court fee payable at that time (currently £82 per LPA), although this fee may be avoided or reduced if you are in receipt of certain means-tested benefits or have an annual income of less than £12,000. If you think you may qualify for a fee reduction then please speak to the lawyer who is advising you for details of what to do next.

The person(s) to notify of the application will then receive a notice, and the registration process takes no fewer than five weeks to complete, but is often far longer. Whilst registration can be delayed until the LPA needs to be used, the length of the registration process means that early registration is preferable. If your Attorney registers your LPA and then uses it before you would want them to do so, you can always cancel it, so long as you are mentally capable.

Do I need a solicitor to make an LPA?

Whilst you do not need to use a solicitor, we can provide appropriate advice and ensure that the registration process is as smooth as possible. We also have experience in assessing mental capacity, which ensures the best possible opportunity for you to sign an LPA no matter your age or infirmity.

Finally, an LPA cannot be amended as time passes. If changes need to be made then a whole new LPA is required. We can help you get it right first time.

Key contacts



Stephen Duffy
Partner

01733 888879
stephen.duffy@buckles-law.co.uk



Sarah Westwood
Partner

01780 484530
sarah.westwood@buckles-law.co.uk



Karl Dembicki
Partner

020 3709 9460
karl.dembicki@buckles-law.co.uk



Marie Cooper
Associate

0115 985 3478
marie.cooper@buckles-law.co.uk