



A Guide to Lasting Powers of Attorney (LPA)

What is a Lasting Power of Attorney?

If you lose capacity either through an accident or illness such as a stroke or dementia, someone needs to act on your behalf to deal with your personal welfare decisions and financial affairs. If you lose the legal capacity to make decisions for yourself your bank accounts are frozen (even if it is a joint account)* until someone can be appointed to make decisions for you. This inevitably causes a lot of distress for friends and family as bills cannot be paid and pensions or benefits cannot be accessed.

A Lasting Power of Attorney (LPA) specifically deals with the appointment of one or more people to manage your affairs if you are unable to do so. The most common appointment is your spouse or partner, along with your children. Unless you have created a Power of Attorney while you have the capacity to do so, your family may have to make an application to the Court of Protection for a Deputy to be appointed. This can not only be a costly and lengthy process but the application has to be renewed every three years and the Deputy has to produce annual accounts.

By creating an LPA in advance, the application only has to be made once, and it is a much cheaper and easier process. In October 2007 the old Enduring Power of Attorney (EPA) was replaced by the LPA, a more comprehensive document. The LPA is the direct replacement for the EPA, though an existing EPA is still effective, if fully completed prior to October 2007.

There are two types of LPA; one to choose who can make financial decisions for you (**LPA Property and Affairs**) and the other where you can choose who should make decisions about where you should live and medical treatments etc. (**LPA Personal Welfare**).



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An LPA (Property and Affairs) document gives your Attorneys the authority to act on your behalf in financial matters such as paying bills, running your bank account, selling investments or your house and claiming any state benefits. There are strict laws in place to prevent them from acting other than for your benefit.

An LPA (Health and Welfare) allows your Attorneys to make choices such as where you live, the type and quality of care you receive and make decisions regarding your medicines and treatment. While this may seem an extreme situation, the ability to request details of medication from doctors can be very important if you have lost the capacity to do so yourself. No one you appoint can make these decisions while you still have the capacity to do so yourself. There is also the option to authorise your attorneys to make end of life decisions for you, if you are in a terminal condition, should you choose to give them this power.

Before your attorneys can act the LPAs must be registered with the Office of the Public Guardian (OPG). As the registration can take many weeks it is strongly recommended that the LPAs are registered immediately so they are in place when they are needed. If you do not register the LPAs, should you lose capacity your Attorneys will not be able to act until they can get the LPA registered, which may then be too late, or they may even have to apply to the Court of Protection, which is quite an onerous task. Another serious issue could arise with delaying the registration in that any technical errors with the witnessing or dating would mean that the paperwork may be rejected at a time when you don't have the capacity to complete a new instruction. Immediate registration is the best practice and strongly recommended by the OPG.

When your LPAs are being drafted you have the option to restrict how and when they are used. You can appoint substitute attorneys and you elect a person (or people) that must be notified before your LPAs can be used.

The Estate Planning Group has many years' experience advising clients in this area and can even provide a trained person to provide the necessary Certificate of Capacity to create a valid LPA.

Contact us now for a free, no obligation, discussion of your circumstances and estate planning needs.