

FACTSHEET

Wills, Trusts + Probate



Guide to Lasting Powers of Attorney

A Lasting Power of Attorney is a legal document that allows you to appoint people (known as 'attorneys') to make decisions on your behalf.

There are two types of Power of Attorney (LPA):

1. Financial Decisions LPA, which enables your attorney to deal with your property and finances, as specified;
2. Health + Care Decisions LPA, which authorises your appointed attorney to make decisions about your health and welfare when you lack the mental capacity to do so yourself.

Financial Decisions LPA

A Financial Decisions LPA gives you the power to appoint an attorney to make a range of decisions on your behalf, including:

- + buying + selling property
- + managing your bank account
- + making investments
- + paying a mortgage and bills
- + dealing with tax affairs
- + claiming benefits

Health + Care Decisions LPA

A Health + Care Decisions LPA allows you to appoint an attorney to take decisions for you, such as:

- + where you live
- + your day-to-day care, including what you should eat and wear
- + who you have contact with
- + what activities you participate in
- + whether to give or refuse consent to medical treatment

Your mental capacity

You can only make an LPA if you have the mental capacity to give instructions and you fully understand the implications of the LPA.

If you are in doubt about your mental capacity, we can seek a medical opinion.

If you've left it too late and you've lost the capacity to make decisions yourself, the only way for someone to become your attorney is by application to the Court of Protection.

Choosing your attorney

An LPA is an important legal document and it's crucial that you give careful consideration as to who would be the best attorney to act on your behalf.

When choosing an attorney, you should consider whether they're trustworthy and have the necessary skills to make important decisions in your best interests.

Your attorney can be anyone aged 18 or over and can include a relative or friend, a professional (such as a solicitor) or your husband, wife or partner.

You can also choose to appoint more than one attorney. If so, they can be appointed to act:

- + Jointly – i.e. they must always act together
- + Jointly and severally – i.e. they can act together or separately of each other

You can appoint your attorneys to act jointly in respect of some matters, and jointly and severally in day-to-day duties.

You can also appoint replacement attorneys who can act if your named attorneys are unable to (for example, if they die before you).

However you should be cautious of over complicating your LPA as this could cause problems with interpretation in the future.

Acting in your best interests

An attorney appointed by you under an LPA must act in your best interests under the relevant circumstances.

The Mental Capacity Act 2005 sets out a checklist of factors that should be considered when deciding what is in the best interests of a person who lacks capacity.

Where practical and appropriate to do so, these include encouraging you to take part in decision making and consulting with your relatives, carers and any others who have an interest in your welfare.

Preferences + instructions

You can tell your attorney how you would prefer them to act or give them specific instructions.

These are subject to the courts approval however, and can be removed if they are deemed impractical or unworkable.

The attorney is legally bound by any valid instructions within your LPA.

However preferences – albeit clearly helpful – are not binding.

Continued...

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Certificate providers

A valid LPA must include a certificate completed by an independent third party, known as the 'certificate provider'.

They must confirm (in their opinion) that:

- + you understand the purpose of the LPA and the scope of the authority granted under it
- + no fraud or undue pressure is being used to persuade you to create the LPA
- + there is nothing else that would prevent the LPA from being created.

A certificate provider can be a professional or person who has known you at least two years. They should be able to demonstrate that they:

- + understand what is involved in an LPA
- + understand the effect of making an LPA
- + have the skills to assess that you understand what an LPA is and what is involved in making an LPA
- + can assess that you also understand the contents of your LPA and the powers you are giving the attorney(s)
- + can verify that you're under no undue pressure by anyone to make the LPA
- + have sufficient knowledge and understanding of your affairs to be able to feel satisfied that no fraud was involved in the creation of your LPA

It's important that you choose a suitable certificate provider as this is an important safeguard. Without the certificate the LPA can't be registered and used.

Notifying named persons

You can choose whether or not to notify named persons of the registration of the LPA.

This acts as an additional safeguard. You can name up to five people to be notified when an application to register the LPA is made. There aren't any restrictions on the relationship between you and these people; however an attorney (or replacement attorney) who is appointed in the LPA can't be specified as a named person.

Deputyships

If you lack mental capacity to make decisions regarding your affairs and you don't have a valid LPA, it will be necessary to make an application to the Court of Protection for an order, such as the appointment of a deputy, to make decisions on your behalf.

The court will also need to be involved in making decisions:

- + where the assets are more substantial or complex than family members are used to handling, and there is no suitable professional to appoint as attorney
- + in cases where litigation may lead to a substantial award of damages for personal injury

Disclosure of your Will

You may decide that it is wise for an attorney to see your Will. This is to avoid them acting in a way which is contrary to your intentions – for example, by selling a property which you have specifically bequeathed.

If so it's important to understand that your attorney has a common law duty to keep your affairs, which include the content of your Will, confidential.

Further information

For advice and guidance on making an LPA, contact our specialist Wills, Trusts + Probate team on **0117 325 2929**.

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