

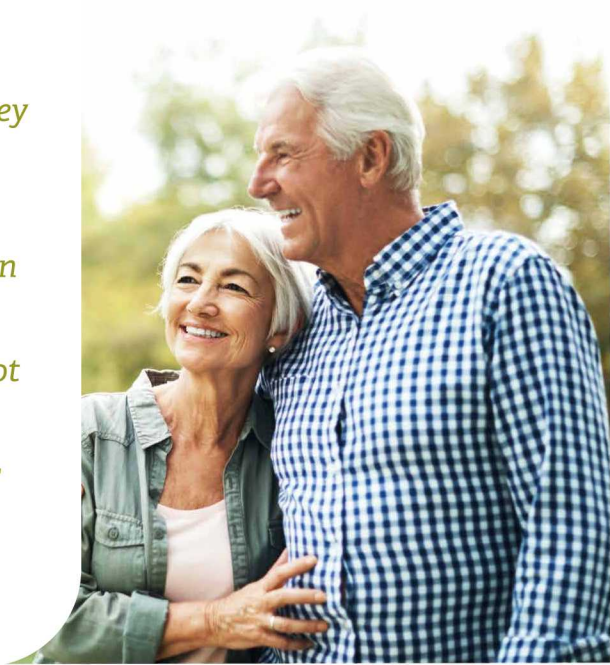
Lasting Power of Attorney Series



**ACTING AS
AN ATTORNEY**

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of
6

Once a Lasting Power of Attorney (LPA) has been registered, you will be able to make certain decisions on behalf of the person who has appointed you as their Attorney (the Donor). You cannot ask another person, who is not appointed as an Attorney under the LPA, to make a decision for the Donor on your behalf.



When can I start acting as an Attorney?

If you are appointed as an Attorney under a Health and Welfare LPA, you can only act if and when the Donor loses mental capacity. On the other hand, you can act under a Property and Financial Affairs LPA either before or after the Donor loses capacity, unless the LPA specifies otherwise.

You must have a reasonable belief that the Donor lacks capacity to make a decision at the time it needs to be made before you can act on their behalf. You can of course seek professional advice about the Donor's capacity, and our experts here at Goughs are happy to make the relevant assessment if you are unsure about it.

The Donor should not to be treated as unable to make a decision purely because a decision they had previously made was unwise. You also cannot base your decision on their age, appearance, condition or their behaviour.

*"Understanding, clear
and honest advice.
Transparent with
regard to costs.
Excellent".
Ms M, Melksham*

What happens if I am not the only Attorney?

The Donor may appoint more than one Attorney. Attorneys who are appointed jointly must always agree unanimously and act together when making a decision. In contrast, if the Attorneys are appointed jointly and severally then they may make decisions either together or independently.

If you cannot agree with the other Attorney about a particular decision, or if you disagree with a decision another Attorney has made, you may refer it to the Office of the Public Guardian for an independent determination. You will need evidence that the decision was not in the best interests of the Donor.

What are my duties as an Attorney?

You must give the Donor all of the help they need to make the decision before deciding that they do not have the capacity to make it themselves. You should provide all the information necessary to help them make the decision and ensure that they fully understand it. If the Donor cannot tell you in words, perhaps you could suggest alternative ways in which they could communicate their decision (blinking, nodding or squeezing your hand).

Even if you decide that the Donor does not have the requisite capacity to make the decision for themselves at that time, you should encourage the Donor's involvement as much as possible. All decisions must be in the Donor's best interests. You should consider their values, feelings and wishes and in particular their moral, political and religious views. You should not make assumptions about the Donor's best interests on the basis of their appearance, sexuality, gender, age, health or behaviour.

You must not make decisions which may restrict the Donor's rights and freedom of action. This includes decisions relating to voting and relationships. As you would expect, you must not receive any unauthorised profit or personal benefit from your position as an Attorney.

What can I do under a Health and Welfare LPA?

When acting under this type of LPA, you can liaise with doctors and other professionals involved in the Donor's care and make daily decisions relating to, for example, their living arrangements, whether the Donor should participate in social and educational activities, and what they eat and wear.

If the LPA specifically provides for it, you may also make decisions relating to life sustaining treatment for the Donor.

Can I get paid acting under an LPA?

You can be reimbursed for incidental expenses incurred in carrying out your duties as an Attorney, but you are not entitled to remuneration for your position unless the LPA specifically authorises it.

Can I stop acting as an Attorney?

If the LPA is registered and you no longer want to act as an Attorney, you must notify the Office of the Public Guardian and the Donor. We can help you prepare the necessary notification form and advise you on the implications of revoking your Attorneyship.

What can I do under a Property and Financial Affairs LPA?

You will be able to manage the Donor's finances with regard to bank and building society accounts; property and investments; paying bills; tax matters; pensions and benefits. All you need to do is let the bank or building society, for example, have a certified copy of the LPA and they will liaise with you as if you were the account holder.

You must keep details of transactions carried out on the Donor's behalf. Depending on the complexity of the Donor's affairs, bank statements may be sufficient. If the affairs are more complicated, you may need to keep detailed accounts. Our Private Client team will be happy to prepare the accounts for you.

In any event you must keep the Donor's affairs separate from your own, unless you have a joint bank account or property together.



HAVE YOU BEEN PUTTING OFF UPDATING YOUR WILL?

Get in touch today.



CREATING A TRUST ISN'T AS COMPLICATED AS YOU MIGHT THINK.

Speak to your lawyer for more information.

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