

Lasting Power of Attorney Series



**CREATING A
LASTING POWER
OF ATTORNEY**

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If an Individual becomes incapable of managing their own affairs or of making important decisions, they may need someone else to make those decisions for them.



Who should I appoint?

It is very important that you choose someone you completely trust to act in your best interests at all times. We can discuss the suitability of your choices and give you advice on suitable alternatives, if necessary.

Attorneys need to act in accordance with their duties and obligations, which are detailed in the Mental Capacity Code of Practice and in particular they must always act in your best interests. If you are still able to make decisions, the Attorney must give you all the help you need to be in a position to do so. If you would like more information about the duties of Attorneys, you can read our fact sheet 'Acting as an Attorney' or we can discuss this with you.

A LPA can be cancelled at any time as long as you still have the capacity to do so.

Why is it important?

Making a LPA is important because, should you ever be in a position where you are unable to do so yourself, you will need someone to take care of your assets and personal welfare.

If a LPA is not made in advance, when you have capacity to do so, your family or friends will not have the automatic right to step in and make decisions relating to your affairs. Indeed the Court may need to decide who will act for you, which is both a costly and lengthy process. Therefore you should start to think about who will manage your affairs before the issue of capacity arises. This will make things much easier and less stressful for your friends and family.

What is it?

A Lasting Power of Attorney (LPA) is a legal document which lets an Individual (the Donor) appoint one or more trusted friends or family members (the Attorneys) to make decisions on their behalf should they lose the capacity in the future to make these decisions themselves.

There are two types of LPA, and the types of decisions an Attorney can make will depend on which particular LPA they are acting under, and the provisions of the LPA itself. The contrasting decisions an Attorney can make under each LPA are as follows-

1. Property and Financial Affairs

- Buying or selling property
- Managing investments
- Accessing and using bank accounts
- Managing any claims for benefits or relief

This LPA can be used either before or after you lose the capacity to make your own decisions, unless the LPA specifically provides otherwise.

2. Health and Welfare

- Giving or refusing to consent to medical treatment
- Where someone will live and with whom
- Accessing medical records
- Decisions on the Donor's care plan, including their diet, how they should spend their day etc.

The Attorney can only act on the Donor's behalf if they become unable to make their own decisions.

"Clear and straightforward service. Maxine's fees were clearly stated and I felt able to raise all relevant issues"

P R, Corsham

For both LPAs, the Donor can restrict the types of decisions their Attorney can make, or let them make all decisions on the Donor's behalf. We will be happy to advise you in relation to the particular provisions of the LPA and how you can personalise it.

How do I prepare a Lasting Power of Attorney?

Preparing a LPA may seem like a daunting process. However, our Private Client team will be happy to prepare all the necessary documentation for you. We will meet you to discuss the LPA in detail and to ensure that you are happy with all elements of the process. We can also make any application to the Court which is necessary.

Each LPA must first be registered with the Office of the Public Guardian (OPG), incurring a fee (currently £82), before it can be used, and this can take up to 10 weeks. Once signed, we recommend that the LPA is registered straight away because should anything happen to you before registration, your chosen Attorney may not be able to make decisions for you.

If you lose mental capacity before the LPA is registered, but you signed it whilst you still had the capacity to do so, your chosen Attorney can register it for you.

If you have been appointed as an Attorney, we can advise you on your duties and obligations and help you with any applications to the Court you may have to make.



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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