

# Making a Lasting Power of Attorney



When planning for the future, you may not consider the possibility of being unable to make decisions for yourself because of physical or mental incapacity.

By preparing a Lasting Power of Attorney (LPA) you can ensure that your best interests and finances are left in the hands of those you trust.

## What is an LPA?

An LPA is a legal document which allows you (the "Donor") to appoint one or more people (the "Attorneys") who you trust to make decisions or help make decisions on your behalf.

Existing Enduring Powers of Attorney (EPA, which have been replaced by LPAs) will continue to be valid if signed before 1 October 2007 but only in respect of someone's Property and Finances.

## Mental capacity

When making an LPA you must have the necessary mental capacity to understand the nature and effects of what you are signing, and the importance of choosing the right Attorney.

If it is established that someone does not have the capacity to sign an LPA, the family members, friends or in some cases, where the donor does not have anyone else, the local authority may need to apply to the Court of Protection for a Deputyship Order. These become costly and time-consuming, with annual fees and reports having to be submitted to the Court.

There are two types of LPA:

**Property & Financial Affairs  
and Health & Welfare**

There are two types of LPA which are Property & Financial Affairs and Health & Welfare. The Property & Financial Affairs LPA allows your chosen Attorney or Attorneys to manage your money, including pensions, and payment of any outgoings. Your Attorneys can even sell your property if this is needed.

The Health & Welfare LPA removes any decision on behalf of the Donor by doctors and Social Services in relation to your medical treatment and care.

## Property & Financial Affairs LPA

This document will allow your Attorney to make a decision in respect of your property and finances just as you can make now, for example, closing a bank account.

Once the LPA is registered with the Office of the Public Guardian (OPG), the document is ready for use by your Attorneys, even whilst you are mentally capable. Whilst you may not require your Attorney's assistance immediately, help may be needed from time to time, for example if you were temporarily in hospital, or if you were on holiday.

## Health and Welfare LPA

This document allows your Attorney(s) to make important decisions to include medical care and treatment, where you live, and even giving or refusing life-sustaining treatment. However, with a Health & Welfare LPA even once registered, these can only be used if the Donor is unable to make a decision for themselves.

# Meet the Probate & Wills Team

## Things to consider

**Attorneys:** This is an important role which requires a level of trust on your part in knowing that the person you appoint has your best interest in mind. An Attorney must also have the necessary capacity, be 18 years or older and cannot be a bankrupt.

**Persons to Notify:** This is no longer a requirement, however if the Donor is appointing two of three children to act as Attorney's, it would be recommended to notify the third child. Notifiable people are given an opportunity to object should they have any concerns about the appointment.

**Certificate Provider:** This is someone who will sit down with you and signs the LPA if satisfied that you have read through and fully understand the document. The Certificate Provider will need to be a professional such as a solicitor, GP or social worker. Alternatively, they can be a person who has known the Donor for more than two years and who is not a member of the family.

## How to appoint my Attorneys

There are three ways which Attorneys can be appointed:

- Joint
- Joint and Several; or
- 'Joint' for some decisions and 'Joint and Several' for others.

On a practical basis, a Joint and Several appointment is favoured. This is something to consider as the appointment could affect the LPA if something were to happen to the Attorneys. For instance, if two Attorneys are appointed to act Jointly, but one Attorney dies, the LPA is no longer valid. For the considerations mentioned above, specialist advice should be obtained before applying for a LPA.

## How to make an LPA

Anyone who is 18 years old or over and holds the necessary capacity can prepare an LPA and so this does not have to be prepared by a solicitor. However, by using Lawson West, we are able to ensure the completion and registration of your LPA and, for peace of mind, we can also act as Certificate Provider which comes as part of acting for you.

If you would like to find out more or arrange an appointment to discuss LPAs with our team at any of our offices, please contact us.



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At Lawson-West, we offer professional, friendly and practical advice to ensure that your wishes are accurately reflected. We can highlight any key issues or provide alternative solutions and ensure your LPA is created and registered correctly to provide you and your family with peace of mind.

*Please note that this guide is intended as general information only, for private use by our clients. It is not a statement of the law and should not be relied on as advice in any particular case.*

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