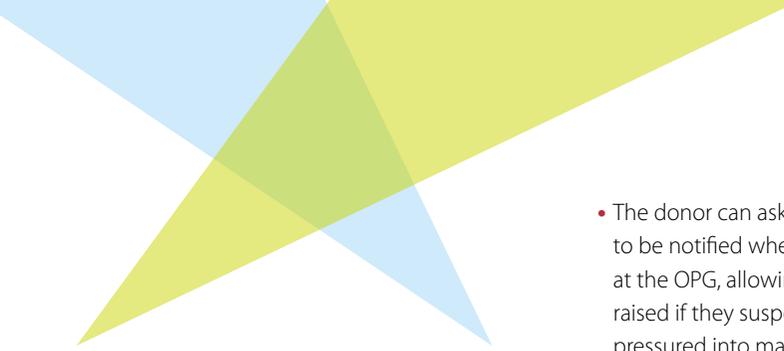


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Lasting Powers of Attorney





What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document which enables you to choose someone (the Attorney) you trust to make decisions on your behalf about, for example, your finances and property at a time in the future when you are no longer able to do this yourself.

An LPA can be made by anyone aged 18 or over, with capacity to do so. You cannot make an LPA jointly with another person – each person must make their own.

The advantages of an LPA

Compared to its predecessor, the Enduring Power of Attorney (EPA), an LPA has a number of advantages:

- Attorneys can be appointed to cover property, financial, health and welfare issues;
- Compared to an EPA, an LPA provides greater protection to vulnerable people from dishonest relatives seeking to take advantage;
- LPAs must be registered with the Office of the Public Guardian (OPG) before being used. While this does add to the cost, it is more secure and we are seeing an increase in popularity because of the enhanced protection afforded;

- The donor can ask for up to five people to be notified when the LPA is registered at the OPG, allowing for objections to be raised if they suspect the donor was unduly pressured into making the LPA;
- Different Attorneys can be appointed to make different types of the decisions, this increases flexibility Replacement Attorneys can also be appointed if an original appointee cannot act for specified reasons; and
- Attorneys can authorise health and welfare decisions on behalf of donors, even to the point of making decisions about life-saving treatment.

Two different types of LPA

Property and Financial Affairs LPA

This will authorise your Attorney to make decisions on your behalf concerning your Property and Financial affairs. This could include paying bills, collecting income/benefits or selling your house (subject to any pre-imposed donor restrictions). You can appoint an Attorney to manage finance/property whilst you still have capacity as well as when you lack capacity. Please note that the LPA must be registered for the Attorney to act.

Health and Welfare LPA

Unless you add restrictions, your Attorney will have authority to make all personal welfare (including health and care) decisions, save for:

- Life sustaining treatment, unless you have expressly authorised this; and

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- Where you subsequently make an Advance Decision to refuse treatment (known as a Living Will). This enables a person with capacity to refuse specified treatment at a point in the future when they lack capacity to make said decision.

It is important to note that Health and Welfare decisions can only be made on your behalf when you lose capacity to make them yourself, e.g. age-related capacity illnesses. The Health and Welfare LPA must be registered for the Attorney to act.

What are the safeguards?

An LPA is a powerful legal document. The person/people you appoint as your Attorney(s), will have the same control as you have over your money, savings, any investments and property. When choosing your Attorney, be confident they know what you want. They should be someone you know well and trust. In addition, they must be at least 18 or a trust corporation. You may choose more than one Attorney and if you do, you will need to decide whether your Attorneys should act jointly (so they all need to sign any document to make it effective) or jointly and severally, meaning that they can all act together but also separately if they wish.

There are safeguards which include the following:

- The requirement to identify someone to confirm amongst other things, that you understand the purpose of an LPA and the scope of powers you are giving to your Attorney(s);

- The provision for up to five people to be notified before registration of the LPA. An Attorney of the LPA cannot be specified as a person to be notified. If you decide not to include anyone to be notified, a second person will be needed to certify your understanding;
- Your signature, together with that of your Attorney(s) to be witnessed;
- The right of specific people (such as you, your Attorney(s) and named people) to object to the registration of the LPA.

There are also optional safeguards such as:

- Including restrictions or conditions in the LPA which your Attorney(s) must follow. For example, you may include a condition that your Attorney(s) need to keep accounts to be submitted to someone of your choice, such as a family member or professional; and
 - Giving guidance in your LPA which your Attorney(s) should take into account when making decisions on your behalf.
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Paying Attorneys

An Attorney is entitled to be reimbursed for out-of-pocket expenses incurred whilst carrying out their duties. Professional Attorneys, such as solicitors and accountants will charge for their services.

Registration of an LPA

The LPA can be registered anytime after it has been completed and signed by all those who are required to sign.

It is generally best practice to register an LPA sooner rather than later as there are

implications of not registering it shortly after having been made. For example, if the Donor of an unregistered Health and Welfare LPA faced a medical emergency, their Attorney would not be authorised to act on their behalf until the power is registered, which at the very least would take between six and eight weeks.

As previously indicated, a Property and Financial Affairs LPA can be used whilst the Donor still has capacity, unless it specifies that it cannot. A Health and Welfare LPA, however, can only be used when the Donor no longer has capacity to make the particular decision affecting their health, care or personal welfare.

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Wills & Inheritance Quality



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