



LASTING POWERS OF ATTORNEY

Lasting powers of attorney enable you to appoint a trusted person or persons to act on your behalf, and in your best interests, after you have lost mental capacity.

WHAT IS A LASTING POWER OF ATTORNEY?

There are two types of lasting power of attorney (LPA). One is a document in which you are able to appoint trusted individuals to act as your attorneys in relation to your finances and property. In the other, you can appoint people to take decisions regarding your personal welfare.

LASTING POWER OF ATTORNEY FOR PROPERTY AND FINANCIAL AFFAIRS

Your attorneys under this LPA can make decisions on your behalf in connection with your property and financial affairs. Subject to any preferences or instructions you include, these financial decisions can range from day to day matters such as paying bills and collecting your income and benefits, to selling your house.

The LPA document does not become valid for use until it is registered at the Office of the Public Guardian (OPG). Under this type of LPA you can allow the attorneys to act on your behalf as soon as the LPA is registered. This can be useful, for example, if you have problems with mobility and you need someone to attend the bank to deal with your accounts, or you are out of the country. Alternatively, you could prevent the use of the LPA by your attorneys until such time as you no longer have mental capacity.

Once registered, if you lose mental capacity your attorneys can continue to act on your behalf and take control of your financial affairs as if they were you (although there are certain restrictions, for example, in relation to making gifts).

LASTING POWER OF ATTORNEY FOR HEALTH AND WELFARE

Under this type of LPA your attorneys can make decisions on your behalf about your health and care, including matters such as deciding where you live. They may also be given authority to give or refuse consent to life-sustaining treatment on your behalf. These decisions can only be taken on your behalf when you lack capacity to make them yourself, for instance if you are ill, unconscious or because of the onset of a condition such as dementia.

You can make a statement in the LPA expressing your wishes and preferences about your care and treatment. The statement is not legally binding but is helpful guidance for those involved in your care and they will be required to take note of the preferences as part of any decision in your best interests.

Health and welfare LPAs can sit alongside other documents dealing with medical decisions known as “advance decisions” and “advance statements”. Instead of delegating decisions to attorneys, advance decisions allow you to take decisions now regarding the refusal of specified medical treatment in the future - such decisions are binding once you lose capacity.

An advance statement is a more wide-ranging document which allows you to set out your preferences regarding medical treatment and care, for example, where and how you wish to be cared for. Advance statements are not binding and you cannot oblige healthcare professionals to provide treatment which they do not consider to be clinically necessary or appropriate.

If you would like more information about advance decisions or advance statements, please let us know.

MAKING A LASTING POWER OF ATTORNEY

Attorneys

In order to make an LPA you need to decide who you wish to appoint as your attorney(s). Attorneys must always act in your best interests. You can have as many attorneys as you wish and it is advisable to have more than one, or to have a replacement attorney in the background in case anything happens to the attorney(s) you appoint. You can then decide whether they should act together (i.e. unanimously), independently (so that any one attorney can act alone) or together in some matters and independently in others. An LPA is a very powerful instrument; it is essential to appoint attorneys you trust implicitly and, if more than one, who will be able to work together.

You can record preferences and give instructions to your attorneys. For example, we recommend including a provision in the LPA for financial decisions allowing your attorneys to appoint a discretionary investment manager and a provision allowing attorneys to request sight of your Will after you have lost capacity.

Certificate provider

As part of the process of making an LPA an independent individual must sign a certificate within the document to confirm they have discussed the LPA with you, that you understand what the document does and to confirm that you have not been pressured in any way by anyone into making the LPA. The certificate provider can be someone you have known for at least two years but who is not connected in any way to your LPA – and so cannot, for example, be one of your attorneys. Alternatively, the certificate provider can be one of a list of professional people such as a solicitor.

People to notify

Within the form you also have the option to name individuals, again not connected to the LPA process, who will be notified when the document is sent to the OPG to be registered. This is a safeguard so that the OPG can be satisfied that other individuals know that you are carrying out the process and could raise concerns with the OPG before the document is registered.

Registration

Once you, your attorney(s) and your certificate provider have all signed the document, it must be registered before it can be used. Notices will need to be sent to the individuals to be notified (if applicable) and then the LPA form can be sent to the OPG for registration. The current OPG fee for registration of an LPA is £82.

Registration will take at least three weeks to give those notified a chance to come forward with any issues. Realistically, we do not usually hear back with registered LPAs for up to 20 weeks after an application is made. The registered LPA is returned with the OPG stamp on each page meaning that the document has been validated and is ready for use.

Due to the process involved and the time it takes to register the LPA, we recommend that the application for registration is made as soon as the document is signed so that it is ready for use in the case of an emergency.

FEES

We prepare LPAs for clients on a fixed fee basis. For an individual, the fee is £950 plus VAT for one LPA (Property & Financial Affairs or Health & Welfare) and £1,500 plus VAT where both types of LPA are being put in place. For a couple putting in place mirror LPAs, the cost would be £1,700 plus VAT for one type of LPA, or £2,500 plus VAT for both. This is on the assumption that there is a usual level of discussion and there are no complex preferences, instructions or issues. In addition, as noted above, OPG fees are payable on registration (currently £82 per LPA).

GETTING STARTED

If you have decided that you would like to make an LPA for property & financial affairs or for health & welfare you can either make an appointment with a member of the Private Client team to discuss further and give your instructions, or you can complete a standard questionnaire which takes all of the information needed for us to prepare the LPA(s). If you wish us to act as a certificate provider, we will need to have a separate meeting with you to sign the certificate within the LPA(s).

STEVENS&BOLTON

Wey House, Farnham Road
Guildford, Surrey, GU1 4YD
Tel: +44 (0)1483 302264
Fax: +44 (0)1483 302254
DX 2423 Guildford 1
www.stevens-bolton.com

The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.

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