

Information for LPA Donors

A Lasting Power of Attorney (LPA) is a legal document that lets you (the 'donor') appoint one or more people (known as 'attorneys') to help you make decisions or make decisions on your behalf.

This gives you more control over what happens to you if, for example, you have an accident or an illness and can't make decisions at the time they need to be made (you 'lack mental capacity').

There are 2 types of LPA:

- Property & Financial Affairs
- Health & Welfare

What is a Property & Financial Affairs Lasting Power of Attorney?

A Property & Financial Affairs Lasting Power of Attorney is a document by which you can choose one or more persons to manage your affairs. Unlike an ordinary Power of Attorney, it "lasts" if you were to become mentally incapable. In other words, you are allowing one or more persons to do anything you can legally (subject to any restrictions you might like to include) and they will be able to continue to do so even if you yourself are unable to.

Lots of people think that if they are unable to cope with their house and their money, stocks and shares, bank accounts or pensions themselves, their partner or spouse will automatically be able to do so. This is not so. There is no right to be able to manage your partner's or spouse's affairs. A particularly difficult situation can arise when one of two joint owners become mentally incapable. The bank should then freeze the account which can prejudice a person who is still able to manage his or her affairs.

A Property & Affairs Lasting Power of Attorney is usually the best way around these problems. If you do not have a Power of Attorney, and you are unfortunate enough to become incapable, the only way for somebody to be able to manage your affairs is for that person to apply for a Court Order of the Office of the Public Guardian. This is lengthy, expensive, and very cumbersome, and you would not know who is applying for the order on your behalf. Powers of Attorney can and do save a lot of trouble and expense.

Why do I need a Financial & Property Affairs Power of Attorney? A Property & Financial Affairs Lasting Power of Attorney is a guarantee that, if you should become mentally - or physically – incapable somebody will be able to look after your affairs on your behalf. Unless you say otherwise, the person or persons you choose (the Attorneys) will be able to sell, mortgage or otherwise deal with any house or flat that you own.

What is a Health & Welfare Lasting Power of Attorney? A Health & Welfare Lasting Power of Attorney gives your attorney(s) the power to make decisions about things like:

- your daily routine, eg washing, dressing, eating
- medical care
- moving into a care home
- life-sustaining treatment

It can only be used when you're unable to make your own decisions.

You can state in your Health & Welfare LPA what you'd want to happen if you needed life-sustaining treatment and you no longer had mental capacity. Life-sustaining treatment means care, surgery, medicine or other help from doctors that's needed to keep someone alive.

Life-sustaining treatment can include:

- a serious operation, such as heart bypass surgery
- chemotherapy, radiotherapy or another cancer treatment
- an organ transplant
- artificial nutrition or hydration (food or water given other than by mouth.)

You have 2 options:

- Option A: Yes - I want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.
- Option B: No - I don't want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

If you choose option B: it means that doctors will make the decisions about life-sustaining treatment instead of your attorneys.

Whether some treatments are life-sustaining depends on the situation. For example, if someone had pneumonia, a simple course of antibiotics could be life-sustaining.

Decisions about life-sustaining treatment can be needed in unexpected circumstances. One example is a routine operation where things don't go as planned.

Option A: Attorneys - Choose option A: if you want your attorneys to decide about life-sustaining treatment if ever you need it and can't make the decisions yourself.

At the end of the LPA tool there is a section where you can add restrictions and guidance for your attorneys. If you have specific wishes about life-sustaining treatment, make them clear in that section, so that any decisions your attorneys make are as close as possible to the decisions you would have made.

You can specify medical or physical conditions where your attorneys must or must not consent to life-sustaining treatment on your behalf. For example, you can state that your attorneys must not agree to life-sustaining treatment if you are in a persistent vegetative state.

If you have already made an 'advance decision' to refuse a specific life-sustaining treatment, your LPA will override the advance decision if you give your attorneys the power to decide about life-sustaining treatment.

An advance decision is a legally binding document in which you state which life-sustaining treatments you don't want, in case you cannot decide at some point.

Option B: Doctors - Choose option B: if you want your doctors to decide about life-sustaining treatment if you can't. If the situation arises, they must:

- carry out an assessment of your best interests
- take into account, where possible, the views of your attorneys and other people involved in your welfare
- take into account what you have said or written about life-sustaining treatment, including any guidance you've given in your LPA

Frequently Asked Questions

Who should be my Attorney?

You can appoint one or more attorneys.

You can of course have your spouse or partner however, you should think about appointing a substitute in case your spouse or partner lost their capacity or were to die before you. You can appoint one or more other members of the family or friends.

It is essential that the person or persons you chose are honest and you trust them completely.

Should my Attorneys (if there are more than one) act together or “together and independently”?

If you have more than one Attorney, those Attorneys should either be stated to act “together” or “together and independently”.

If they act together and one of your Attorneys disclaims, dies, becomes bankrupt or loses mental capacity himself or herself, the whole of the Lasting Power of Attorney will come to an end. This is because if you appoint your Attorneys together, they all must act together and therefore every cheque must be signed by all of them and any decision must be taken by them jointly.

If you appoint your Attorneys together, the Power of Attorney will completely come to an end if the marriage or civil partnership between you, the donor and the Attorney is dissolved or annulled. The possible advantage of appointing your Attorneys to act together is that it may provide a safeguard against possible abuses, as each Attorney would be able to oversee the action of the other(s).

If you appoint your Attorneys to act together and independently, this means that they can all act together, or one or more can act without the others. If one of the Attorneys was then to disclaim, die, go bankrupt or become mentally incapable, or (if married or in civil partnership to you) was to cease to be so then the Power of Attorney itself would not come to an end. The other Attorneys would still be able to act for you.

When can my Attorney Act?

Your Attorney will not be able to act for you until such time as either you; Wills in Minutes or the Attorney registers the Lasting Power of Attorney at the Office of the Public Guardian. This process takes a minimum of 6 weeks, and it involves the preparing and sending various legal documents known as Notices. The Court fee is currently £110.

Wills in Minutes recommend that you do register the Power of Attorney as soon as it is made, as no action can be taken without registration, and we do not know the future. It might be vital for your Attorneys to take action later urgently in circumstances that could not be foreseen without waiting for at least six weeks. For example, if you were abroad and needed your Attorneys to sell an investment for you at once, this would be impossible unless the Power of Attorney had been registered already.

If you do not wish to register the Power of Attorney we would store it for you and it could be registered as and when necessary.

Should I restrict the powers I give to my Attorney?

You must tell Wills in Minutes whether you want the Lasting Power of Attorney to be a general Power, which gives your Attorney(s) authority to manage your property and affairs in all respects, or if you wish to restrict this power in any way.

Does my Power of Attorney allow my Attorney to look at my Will?

No, unless you have specifically put a clause in your Power of Attorney allowing your Attorney to look at your Will. Your Attorney, of course cannot make a Will on your behalf.

What is a “Certificate Provider”?

It is an essential part of the Property and Affairs Lasting Power of Attorney that it contains a certificate by somebody who can confirm that you understand what you are doing. This person can be a qualified Will Writer; solicitor or a doctor.

If there is any question about your mental capacity we recommend that your Doctor is the Certificate Provider. This will avoid or lessen any risk of a challenge to your Power of Attorney on the basis of lack of capacity. The Doctor will probably charge a fee for this service.

The Certificate Provider will have to see you without anybody (and above all without the Attorney) present in the room.

Who are the “people to be notified”?

This section is optional – You can if you wish, let people know that you are going to register your LPA. They can raise any concerns they have about the LPA – for example, if there was any pressure or fraud in making it.

When the LPA is registered, the person applying to register (you or Wills in Minutes) must send a notice to each ‘person to be notified’.

People to notify can object to the LPA, but only for certain reasons. After that they are longer involved with the LPA. Choose people who ware about your best interests and who would be willing to speak up if they were concerned.