



Lasting Powers of Attorney – Why Would I Need One?

Taking account of circumstances that might arise in the future is an important part of financial planning. It is important to consider what might be needed if you become ill, are involved in an accident or lose the capacity to manage your affairs.

Establishing Lasting Powers of Attorney will ensure that your welfare is maintained and your affairs are taken care of, as you would wish should your circumstances change. The information that follows outlines the different types of Lasting Power of Attorney, and why it is so important that you make them.

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) allows you to appoint someone to make decisions on your behalf. It is normally used when someone is unable to make his or her own decisions. There are two types of Lasting Power of Attorney covering:

- Health and Welfare, and
- Property and Financial Affairs.

You can choose to make one type of LPA or both.

What are the two different Lasting Powers of Attorney?

1. Health and Welfare Lasting Power of Attorney

This LPA allows you to choose one or more persons to make decisions about:

- Your daily routine, such as what to eat and wear
- Medical care
- Moving into a care home as this may become necessary
- Refusing life-sustaining treatment.

This Lasting Power of Attorney can only be

used once someone is unable to make his or her own decisions.

2. Property and Financial Affairs Lasting Power of Attorney

This LPA lets you choose one or more persons to make decisions about money and property for you, such as:

- Paying bills
- Collecting benefits
- Selling your home.

You can appoint someone to look after your property and financial affairs at any time. This can take effect immediately after the Lasting Power of Attorney has been registered. However, you can also set it up so that it cannot come into effect until you lose the capacity to make your own decisions.

Why do I need a Lasting Power of Attorney?

Appointing someone you trust to be your attorney, should you become incapacitated, can provide you with the security of knowing that your health and welfare, and/or your property and financial affairs will be overseen and administered as you would wish.

Taking out a Lasting Power of Attorney allows you to plan in advance:

- The decisions you want to be made on your behalf if/when you lose capacity
- The people you want to make the decisions about you when you lose capacity
- How you want people to make decisions about you

Having an LPA is a safe way of maintaining control over the decisions that are made for you because:

- It has to be registered with the Office of the Public Guardian before it can be used
- You choose someone to provide a certificate saying that you understand the significance of it. This ensures that a vulnerable person is not being forced into making an LPA against their wish
- You can choose five 'people to be told' about your LPA when it is registered. This also allows the people you have named to raise any concerns they may have and acts as a safeguard.
- Your signature and that of your chosen attorneys must be witnessed
- If your attorney does not act in your best interests the Office of the Public Guardian can hold them accountable.

What happens if I don't have a Lasting Power of Attorney?

If you become incapacitated and unable to make decisions for yourself and you have not taken out an LPA this can put your friends or relatives in a difficult position. You may no longer have the capacity to make decisions about your health or financial affairs and you will also have no say in who does make the decisions about this for you. If you appoint attorneys you get to choose someone you trust to fulfil these roles on your behalf.

If you don't have an LPA and decisions need to be made on your behalf:

- It can be a long and expensive process
- Your family or friends would have to apply to the Court of Protection for a deputyship order. If there is not a family member or friend willing to act the local authority may have to apply to look after your affairs
- Court fees of £600 are payable along with annual supervision fees, the rates of which depend on the level of supervision required. The help of a solicitor will likely be required and this will add substantially to the cost.

- It could prove to be a lot of work and very stressful for your family or friends at a time when they are coming to terms with an adjustment in your circumstances.
- If you haven't decided in advance and made an LPA there may be disagreements between family members about who should take on this responsibility and this can lead to unnecessary quarrels and lengthen the process as well as incurring further costs.



We recommend seeking help

Taking out Lasting Powers of Attorney can be very complicated, and there is a lot of work involved. It is important that you choose the right people to be your attorneys and that the LPAs are properly created and registered. Although you can do this yourself it is not really something we would advise - if the Lasting Powers of Attorney are not set up correctly they will not be able to be registered, they will not be legally valid or be able to be acted upon.

What happens if I have an Enduring Power of Attorney?

Enduring Powers of Attorney have been replaced by Lasting Powers of Attorney. However, they can still be used if they were made and signed before October 2007. You must register the Enduring Power of Attorney if the donor (the person who took out the Enduring Power of Attorney) is losing or has lost the ability to make his or her own decisions.

You can cancel an Enduring Power of Attorney if you're the donor at any time. If it has been registered you will need to get the permission of the Court of Protection. You will also need to be able to prove you can make your own decisions. Our legal team would be happy to review your current arrangements if you are unsure.

Lasting Powers of Attorney allow you to choose who will make decisions on your behalf should the need arise. That person will be someone you trust and who knows you well. You will have been able to talk with them about what you might like to happen in various circumstances. The powers will not come into effect until you have lost capacity if that is what you choose. As they are registered with the Office of the Public Guardian this provides you with the added security that if for any reason they suspect that your attorney is not acting in your best interests they have the powers to hold them accountable.

If you do not set up any Lasting Powers of Attorney then someone who will not be of your choosing may take decisions on your behalf regarding your health, welfare and financial affairs. The process for obtaining a decision will be lengthy and expensive.

As this is such a vital area, it is wise to seek professional help. If an LPA is not properly registered it will not be valid and you would find yourself unprotected.

Let us know if you think we can help. You can contact us on 01509 635467, or at www.woodgatefp.co.uk.

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