

Property and Financial Affairs Lasting Power of Attorney

Please note that there are two different types of Lasting Power of Attorney, namely a Property and Financial Affairs Lasting Power of Attorney and a Health and Welfare Lasting Power of Attorney. You do not have to have both types.

Please see our separate guidance note on "Health and Welfare Lasting Power of Attorney".

The remainder of this guidance note deals solely with Property and Financial Affairs Lasting Power of Attorney.

Q: What are the advantages of making a Property and Financial Affairs Lasting Power of Attorney (LPA)?

An LPA enables you (the Donor) to plan in advance the decisions and actions you might want someone to take on your behalf in relation to your property and finances at a time when you lack mental capacity.

The person or persons you appoint to make these decisions are your Attorneys.

Furthermore, if for physical reasons you are unable to get "out and about" to pay your bills or manage your affairs a registered Property and Financial Affairs LPA can assist in this regard by allowing you to appoint an Attorney(s) to administer your financial affairs.

Q: Do I need to see a solicitor to make an LPA?

No. However this is what the Office of the Public Guardian (whose job it is to register, track and oversee LPAs) said on the issue of LPAs generally and the obtaining of independent legal advice:-

"...an LPA is a powerful and important document and you may want to seek advice from someone with experience of preparing them, such as a legal adviser. They will be able to offer you legal advice and may be able to help you fill in the form."

Q: Who can act as my Attorney?

You can choose anyone over the age of 18 to be your Attorney.

You can appoint as many Attorneys as you wish, however, bear in mind that if your Attorneys are appointed jointly (see below) then they must be unanimous in their decision making, if there are several Attorneys then this could be problematical.

Your Attorney(s) must have regard to the Code of Practice, which provides guidance on the Mental Capacity Act 2005. The Code of Practice, and more detailed Guidance Notes for Donors, Attorneys and Certificate Providers can be found on the Office of the Public Guardian's website: www.publicguardian.gov.uk

Q: What is the difference between appointing Attorneys jointly and appointing them jointly and severally?

Jointly

Attorneys appointed jointly must always act together. They must all agree before doing anything on your behalf. If one Attorney

does not agree with a proposed action then that decision cannot be made.

Donors often use this as a safeguard to ensure that all those they trust to make decisions for them are in agreement. However, you must remember that this could delay decisions that may need to be taken at short notice.

Jointly and severally

Attorneys appointed jointly and severally can act unilaterally, in other words, independently of each other. Please note that you can stipulate that for some decisions (i.e. more mundane day to day decisions) your Attorneys are appointed jointly and severally whilst for more important decisions (such as the sale of your house) the appointment is to be joint.

There is no right or wrong way to appoint your Attorneys to act but these are points for you to think about.

Q: What is a replacement Attorney and when might I need one?

Replacement Attorneys are people you can appoint to act in place of an Attorney who is no longer able to or does not wish to make decisions on your behalf as your Attorney. For example, you may choose your spouse as your Attorney, then choose your son/daughter as a replacement if your spouse should die or can no longer act on your behalf.

If you want to appoint a replacement Attorney, you do so at the time you make your LPA, and your replacement Attorney has to sign up to taking on this role like any other Attorney. It is your decision whether to appoint a replacement and it is not a requirement of an LPA that you do so.

Q: What sort of powers will my Attorney(s) have?

Making an LPA that does not contain any restrictions or conditions (see below on restrictions and conditions which you can impose within your LPA) means that once the LPA is registered your Attorney(s) will be able to do anything that you can do now in relation to your property and financial affairs.

Q: Who are 'Named Persons' and why do I need them?

The Office of the Public Guardian advise that you name certain individuals within your LPA who must be notified when your Attorney(s) are looking to register your LPA. The requirement to provide named persons is a safeguard so as to ensure that your LPA is used for the right reasons, namely to benefit you the Donor.

Upon being notified of your Attorney(s)' intention to register the LPA if the named persons you have chosen have concerns about the registration – for example they feel that you were put under pressure to make it – they can object.

You can name up to five people – minimum of one.

It is very important that you keep the addresses/contact details of your named persons up-to-date.

Q: What happens if I do not want any Named Persons to be notified?

The Office of the Public Guardian advise that it is best to include named persons within your LPA if at all possible, however, where not possible then you will be required to provide two separate Certificate Providers (see below).

Q: What is the role of the Certificate Provider?

The Certificate Provider is a person chosen by you the Donor to complete the Part B Certificate of the LPA. In signing the Certificate the Certificate Provider confirms that in his or her opinion the Donor:-

- understands what an LPA is and understands the contents of their LPA;
- understands what powers they are giving to the Attorney(s) in their LPA;
- is not being pressured, tricked or placed under duress by someone else to make the LPA; and
- that there is nothing else that would prevent the LPA in question being created.

The Certificate

The Certificate is a vital part of the LPA form. Without it, the LPA is not valid and cannot be registered.

Q: Who can I choose to be a Certificate Provider?

You can choose two types of Certificate Provider.

Category A

Knowledge certification – a knowledge-based Certificate Provider is someone that you know personally and have done so for at least two years.

or

Category B

Skills certification – we, as solicitors, are skills-based Certificate Providers, we have the relevant professional skills and expertise to advise you, the Donor, on your LPA and can sign the Certificate.

Please note that if someone in the future queries as to whether you, the Donor, had capacity to enter into the LPA the Certificate Provider may be required to explain to the Court of Protection their decision to sign the Certificate. This is what the Office of the Public Guardian say about the role of the Certificate Provider:-

“Taking on the role of Certificate Provider is very important as it provides one of the main safeguards in the LPA process”.

Q: What conditions or restrictions can I build into my LPA?

It is really up to you as to the conditions or restrictions you would like to include within your LPA, you may wish:-

1. to include a condition that your Attorney(s) must keep accounts and that they are to submit these accounts to someone of your choice such as a family member or professional, or
2. give guidance in your LPA which your Attorney(s) should take into account when making decisions on your behalf.

Q: Can I include a restriction or condition that my LPA is only registered when I lack mental capacity?

Yes you can but you must specify how the Attorney(s) are to establish that you lack mental capacity, for example, you can include a condition that your Attorney(s) are not to register your LPA until they are able to obtain medical evidence stating that you have lost capacity.

Q: Once the LPA is registered does that mean I have no control over my own financial affairs?

No. Even though acting under a registered LPA means that your Attorney(s) is your chosen decision-maker, it is important to remember that where you still have the capacity to be involved in decision-making your Attorney(s) must consult you before making a decision on your behalf.

Q: When does my LPA have to be registered?

Your LPA can be registered any time after you have made it. Your LPA cannot be used until it has been registered.

The benefit of registering the LPA shortly after it has been executed is that it will be ready to be used by your Attorney(s) when it is needed.

If an application to register your LPA is made a long time before it is needed you may need to look at the registered document from time to time to make sure that the contents are still relevant to your circumstances. In this situation you may wish to contact the Office of the Public Guardian, or us, to see if the law has changed.

Q: How much does it cost to register an LPA?

Currently the registration fee is £110.00. Please note a separate registration fee is payable for Property and Financial Affairs LPAs and Health and Welfare LPAs, in other words a registration fee of £220.00 will be payable if you are looking to register both types of LPA at one time.

Q: What if details within my LPA change and I wish to make alterations, can I amend the LPA?

Attorneys or Named Persons contact details change

If the contact details of your named persons or your Attorney(s) have changed you should record these on a separate sheet and keep it with your LPA. There is no need to enter into a new LPA.

More substantial alterations

If you need to change any aspect of your LPA – for example any restrictions or conditions or you want to appoint a new Attorney – you will need to consider making a new LPA. You cannot make any changes to a signed and certified LPA.

Should you wish to act on your behalf in relation to preparing a Property and Financial Affairs Lasting Power of Attorney then please contact our William Morgan.

Morgan & Co. Solicitors, 62-64 Bridgnorth Road, Wollaston, Stourbridge, West Midlands DY8 3PA

t: 01384 440069 f: 01384 392202 e: admin@morgansolicitors.com

This Firm is regulated by the Solicitors Regulation Authority (SRA) number 520345.

Partners: William J Morgan BA (Hons) LL.M. & Daniel M Williams BEng LL.B.
