

# Lasting Powers of Attorney

**A Lasting Power of Attorney (LPA)** is a legal document that allows you (*the Donor*) to choose someone (*the Attorney*) to make decisions on your behalf when you no longer wish to make those decisions, or you lack the mental capacity to do so. There are two types of LPA, one covering property and financial affairs, and one dealing with personal welfare.

## **Mental Capacity**

You may make an LPA at any time provided you have the necessary capacity. Assessing capacity may be difficult, and may require the assistance of a doctor or other professional person. Broadly speaking, capacity means that you have a general understanding of what decisions you need to make, and the consequences of making or not making those decision.

## **Property and Financial Affairs LPA**

A Property and Financial Affairs LPA enables your Attorney to make decisions regarding your property and financial affairs. You can appoint your Attorney to manage your finances and property whilst you still have capacity. For example, if you were going abroad or into hospital, it may be convenient to allow your Attorney to carry out tasks such as paying your bills or collecting your benefits or other income.

You may decide to give your Attorney the power to make decisions about any or all of your property and finances, even selling your house. If you do not want to give such wide powers, you may require your Attorney to act only in respect of certain tasks and/or only when you lack capacity.

## **Personal Welfare LPA**

A Personal Welfare LPA enables your Attorney to make decisions affecting your personal health care and welfare. This could involve significant decisions, such as:

giving or refusing consent to particular types of health care, including medical treatment decisions; or

whether you continue to live in your own home, perhaps with help and support from social services, or whether residential care would be more appropriate for you.

If you want your Attorney to make decisions about 'life-sustaining treatment', you have to expressly authorise your Attorney. Your Attorney will only be able to use a Personal Welfare Power if you are mentally incapable of making the required decision for yourself, and have made no other advance decision.



## Who do I appoint?

One of the most important decisions to make is who to appoint as your Attorney. Your Attorney should be someone you trust to make decisions in your best interests. The person you choose has to agree to act as your Attorney and it is important they understand the responsibilities involved.

You can make alternative appointments, for example appointing your spouse and your child, with the child to act if the spouse has died or can no longer act for some other reason.

If you appoint more than one Attorney, they can consult on how to exercise the powers they are given, and there is a check on the misuse of those powers. If you do appoint more than one person, you should specify whether they are to act together (*jointly*) or together and separately (*jointly and severally*). If they are to act together, then they have to agree on every decision, and any documents have to be signed by both of them. If they are to act together and separately, then each of the Attorneys will be able to act together with the other or on their own, and most documents will only require one signature.

## Instructions and Guidance

You may include instructions and guidance to your Attorney in your LPA. Your instructions can include restrictions or conditions as to the way the power can be exercised and will be legally binding on your Attorney. Guidance is not legally binding, but your Attorney should consider it when making decisions for you, but may decide that it is in your best interests not follow the guidance.

You should include an express instruction if—

you do not want your Attorney to have authority to act while you remain mentally capable

you want your Attorney to have a discretion, for example to manage investments, or to

disclose the terms of your Will to someone else

you want to restrict the Attorney's power to make gifts.

## Named Persons

You can also specify one or more people (called *named person(s)*) to be notified when an application is made to register your LPA. The named person(s) will have the right to object on your behalf if they have concerns about an application to register your LPA.



## Certificate Providers

Within each LPA, an independent person (*the Certificate Provider*) must complete a certificate to confirm that, in his or her opinion, you are making the LPA of your own free will, that you understand its purpose and the powers you are giving your Attorney. This is an important safeguard and your LPA is not valid unless the certificate is properly completed.

The Certificate Provider must be over 18 and cannot be a member of your family, or an Attorney for you or a member of the Attorney's family or anyone connected with a care home you live in.

The Certificate Provider should speak with you privately to satisfy themselves that you understand the powers you are giving your Attorney and that there has not been a fraud or undue pressure on you to make the LPA. If you have not identified a named person to be notified when your application is registered, you will need two Certificate Providers instead of one.

You can choose as your Certificate Provider someone who has known you personally over the last two years or more, so someone who is more than a mere acquaintance, or someone who, because of their relevant professional skills and expertise, considers themselves able to provide the certificate. You should be aware that professional people may charge a fee for giving the certificate.

## Registration

An LPA cannot be used until it has been registered at the OPG (*office of the Public Guardian*), and this may take several weeks. We recommend you make an application to register as soon as the Power has been signed, in case there is a later need to take urgent action.

Either you or your Attorney can apply to register the LPA. The OPG charges a fee for registration (subject to qualification for exemption or remission) of each type of LPA (£110 in 2014): so, if you make both types of LPAs, you will need to pay two registration fees. Your LPA may be used as soon as registration is complete, unless you have specified that it should only be used when you lack capacity.

You can cancel your LPA, even after it is registered, provided you have the mental capacity to do so. If you do, then you must tell your Attorney and, if the Power has been registered, you will need to ask the OPG to remove it from its Register.

## Why Use Linder Myers

We have one of the largest teams of dedicated lawyers in the country specialising in the preparation of LPAs

A number of our lawyers are members of the Society of Trust and Estate Practitioners (STEP), which is a worldwide body representing practitioners specialising in the area of trusts and estates. [www.step.org](http://www.step.org)

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we provide:-

A postal service using simple forms which are completed in the comfort of your home.

Once received, one of our lawyers will make a telephone call to verify certain details

Telephone service when requested – at a time suitable to the client one of our lawyers will go through a range of questions and take instructions over the phone

Skype and Face Time – as with the telephone service but using this technology to enable face to face discussion.

Many clients wish to visit a lawyer in one of our offices.

We can arrange a home visit and if this is necessary we will discuss the costs associated with.

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