

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a document made by you (the donor) giving one or more people, known as your attorney(s) the legal authority to act on your behalf and make decisions for you in respect of your Property & Financial Affairs and/or your Health & Welfare. You are also able to appoint a replacement attorney(s) should your original chosen attorney(s) be unable to act. Both forms of LPA must be made by you whilst you have the understanding and mental capacity to do so.

What can LPAs be used for?

The Property & Financial LPA can be used by your attorney(s) to make decisions in relation to your finances, such as (but not limited to) paying bills on your behalf, accessing and managing bank accounts and investments or even selling your home should the need arise. An example may be if you need to go into residential care and a sale of your property is required to pay for your care fees.

Many people believe a third-party bank mandate will continue to allow an individual to access another individual's bank account even when that other person does not have the capacity to make their own decisions. Unfortunately, this is not the case, and a third-party mandate will only work where a bank customer has the capacity to provide instructions to an individual that they have trusted. Without the required capacity, the third-party mandate will no longer be valid.

The Health & Welfare LPA can be used by your attorney(s) to make decisions regarding (but not limited to) where you live, the day-to-day care you receive, medication and if authorised to do so, make decisions in relation to life sustaining medical treatment.

Who can be your Attorney?

Your attorney can be anyone over 18 years old as long as they have mental capacity. It is also important that you trust them. You may wish to consider a spouse, civil partner, child, parent, sibling or a close friend. Sometimes individuals do not have a family member or friend that they deem suitable to appoint as their attorney and therefore may prefer to appoint a professional person (such as a solicitor) instead.

When can an LPA be used?

LPAs can only be used by your attorney(s) when they have been registered with the Office of the Public Guardian.

When making a Property & Financial LPA you can decide whether you wish to give your attorney(s) authority to make decisions before or after you have lost the mental capacity to make those decisions yourself. You may wish to authorise your attorney(s) to make decisions for you even whilst you have mental capacity to do so yourself, in situations such as you being unable to attend the bank personally or physically write and sign a cheque.

Health & Welfare LPAs can only be used when you no longer have the mental capacity to make your own decisions.

What happens if I do not have an LPA and I am unable to deal with my own affairs / make decisions?

Without an LPA in place, no one has the legal authority to make decisions on your behalf such as paying bills or accessing your bank accounts. This includes a husband, wife, or child. If you no longer have the required mental capacity to make an LPA, someone would need to make an application to the Court of Protection to act on your behalf under a Deputyship Order. The Court of Protection can appoint a family member, friend or professional (such as a solicitor), to deal with your affairs. Anyone can apply for this order, and therefore it may not necessarily be the person you would have chosen to manage your affairs. The Court of Protection route is more expensive, time consuming and much less flexible. A Deputy has to operate within much stricter constraints and will need to make further applications to the Court of Protection before they can make certain decisions on your behalf.

What is a General Power of Attorney?

A General Power of Attorney is a document you can put in place to appoint someone to act on your behalf, usually for a short period of time and in relation to a specific event, for example signing the documents required to sell a property on your behalf whilst you are overseas.

I want to make an LPA, what should I do now?

If you would like more information about LPAs or would like to arrange an appointment to discuss your circumstances, one of the experienced and friendly lawyers in the Wills, Trusts & Probate team at Sills & Betteridge would be pleased to hear from you on 0800 542 4245.