

A Guide to Lasting Powers of Attorney



**SOUTHEAST
LEGACIES**
WILLS, PROBATE, LPAs



A Lasting Power of Attorney (LPA) is a legal document which allows a person (called the donor) to appoint someone they know and trust to make decisions on their behalf should they become unable to do so in the future. This person is called an attorney. Attorneys must always act in the best interest of the donor. There are two types of LPA. Below is a list of what each involves:

Health and Welfare

- Day to day decisions such as exercise, dietary requirements
- Medical care
- Decisions regarding care homes or sheltered accommodation
- Home care options
- Life sustaining treatment

A Health and Welfare LPA can only be used once it has been registered with the Office of Public Guardian (OPG) and when the donor loses mental capacity.

Property and Financial Affairs

- Managing bank accounts
- Paying bills
- Collecting income and benefits
- Making decisions with regards to the home
- Selling the home

A Property and Financial Affairs LPA can be used as soon as it is registered with the OPG. While the donor has capacity, the attorneys can only act with their permission.

Appointing Attorneys

Normally one to four attorneys can be appointed but it is important for the donor to ensure the attorneys are someone they know and trust to act in their best interests.

Attorneys can act either:

- Jointly (attorneys must agree unanimously on every decision);
- Jointly and severally (attorneys can make decisions on their own or together); or
- Jointly for some and jointly and severally for other decisions (attorneys must agree unanimously on some decisions but can make others on their own).

Capacity

Before an LPA is made, it is imperative that the donor is over 18 and has mental capacity. This means they must understand:

- What an LPA is
- Who they want to make it
- Who they are appointing as attorney
- How they have decided the attorneys; and
- That they understand what powers the attorney will have.

If the donor cannot decide for himself due to a disturbance in the functioning of his mind or brain, such as late onset dementia, it is likely they will not have the required capacity.

Essentially, the donor should be assessed on whether they have the ability to make a particular decision at a particular time. If unsure, a GP or independent mental capacity advocate can assess the donor's capacity.

What happens if you don't have Lasting Powers of Attorney?

If you lose capacity, then your family will have to apply through the Court of Protection in order to request access to your assets or care decisions. The Court of Protection is a very expensive and long process that will only relinquish some access in most situations. You may have to repeat the process several times to get the access that is needed.

Not having a Health and Welfare Lasting Power of Attorney means that if you were to lose capacity then neither you nor your family will be able to decide which care home you will be able to go to, your day to day routine or how you are treated in medical circumstances.

Not having a Property and Finance LPA means that if you were to lose capacity or become extremely unwell then neither you nor your family will be able to access your bank accounts. This includes situations where you need to pay for your own care or food.

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*Lasting Powers of Attorney are **the** most important legal documents to put in place for anyone who wants a say in how their health or finances are dealt with. The cost of not having them runs into thousands of pounds and heartbreak for families.*

— **Age UK**

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Registration: Once the forms have been submitted to the Office of the Public Guardian, they usually take 10–12 weeks to be registered.

Frequently asked questions

Can I do an LPA if my father/mother has lost capacity?

No. An LPA can only be made by someone who has mental capacity. If a person loses mental capacity and has no LPA in place, an application would need to be made to the Court of Protection, who will appoint a deputy to act in the donor's best interests (this is known as Deputyship Order). Anyone over the age of 18 can apply to the Court of Protection to be your Deputy to make financial decisions on the donor's behalf. This can be a lengthy (normally a 6 month timeframe) and very expensive process with the added risk that the application may be refused by the OPG or that no provision will be made for Health and Welfare.

Do I have to register my LPA straight away?

To be effective, an LPA must be registered with the Office of the Public Guardian. There is a registration fee of £82 per document and is means tested so if the donor is on a low income or benefits, they may be eligible for remission of those fees.

It is better to have the LPA registered as soon as possible. The principal reason for this is that if the LPA is registered later on or where the donor starts to lose capacity, if the form is returned by the OPG for any reason (given the long turnaround time), the donor may no longer have capacity and therefore cannot sign the form. This will mean the LPA cannot be put in place for the donor anymore and an application for Deputyship will need to be made.

Can I change my LPA?

An LPA that has been registered can be revoked at any time, providing the donor still has mental capacity. This does mean a new LPA will need to be made and a further £82 registration fee paid.

Can I get an LPA for my business?

Yes. Whilst there is no such thing as a 'business LPA', you can use the Property and Financial LPA to ensure attorneys can continue to make decisions about the continuity of your business, paying staff, entering into contracts, etc. This means if you are a business owner you could have two Property and Financial Affairs LPAs, one dealing with your personal finances and the other appointing attorneys to deal with your business interests.

I have a private pension/investments/funds with an IFA – can they continue if I lose capacity?

We work with a large number of IFAs who understand the importance of putting a financial LPA in place to allow them to continue to make investments and generate income for their clients. Without one there is no deemed consent and the fund may return the money to the investor's account.

Capacity can be lost at any time and could be due to either an accident, a stroke or a deteriorating condition so please don't wait until it's too late.

Common misconceptions about LPAs

"I don't need an LPA because my next of kin can make important decisions on my behalf."

No one can act on your behalf or make decisions on your behalf if they have not been legally authorised to do so.

"My will has appointed executors, so they'll be able to make decisions on my behalf."

A will is entirely separate from an LPA. Executors appointed in a will only have the power or authority to distribute your estate as requested and in line with your will, on death. They have no authority to make decisions on your behalf during your lifetime.

“I don’t need an LPA until I become elderly and of ill health.”

An LPA can be made by anyone over the age of 18 who has full mental capacity. Someone may lose capacity or no longer be able to make decisions due to an accident, being in a coma or other mental illness or dementia.

“Once my Health and Welfare LPA is registered, it means someone else can make decisions for me and I don’t want that while I have capacity.”

A Health and Welfare LPA only comes into effect when the donor loses capacity even if the LPA has been registered. Attorneys can only make financial decisions with your permission if you still have capacity.

“Getting an LPA is expensive.”

The government charges a fee to register Lasting Powers of Attorney. This includes the necessary checks they must carry out on both you and your appointed attorneys. If your income is under £12,000 per annum, or you are in receipt of certain means tested benefits, we may be able to apply for either a 50% reduction or complete exemption from paying registration fees.

Failure to register an LPA and then losing capacity would involve an application for a Deputieship Order, which would cost approximately 10 times more and involve ongoing costs of circa £200/hour.

Please enquire with Southeast Legacies for our up-to-date fees and any current available promotions.

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Main Office
Southeast Legacies
17 Chatsworth Parade
Petts Wood
BR5 1DF

020 8114 7111

contact@southeastlegacies.co.uk

For more information about Southeast Legacies please visit our website at southeastlegacies.co.uk

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