

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:

Property and Financial Affairs

- Paying bills
- Business decisions
- Collecting income and benefits
- Decisions regarding any property in your name
- Managing financial accounts (ISAs, savings, etc.)
- Dealing with pensions on behalf of someone else

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

Health and Welfare

- Day-to-day decisions such as exercise and 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 OPG and when the donor loses mental capacity.

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
- what powers the attorney will have.

If the donor cannot decide for himself or herself due to a disturbance in the functioning of his or her 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 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.

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.



Lasting Powers of Attorney are as important as a will. Without them, the effect can be catastrophic.

Martin Lewis
– Money Saving Expert



Registration: Once the forms have been submitted to the Office of the Public Guardian, they can take months to be registered. If an LPA is needed urgently, this can be an agonising wait. An LPA is only valid once it has been registered.

Frequently asked questions

Isn't an LPA just for old people?

Absolutely not. Anyone with assets in their sole name, or running a business, needs an LPA to ensure someone could act on their behalf.

What happens if someone doesn't have capacity?

An application is then made to the Court of Protection, which can be a lengthy and expensive process.

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 registration fee paid.

Can I get an LPA for my business?

Yes. While there is no such thing as a 'business LPA', you can use the Property and Financial LPA to ensure attorneys can 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 suffering from 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 Deputyship Order, which would cost approximately ten 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.

**SOUTHEAST
LEGACIES** 
WILLS, PROBATE, LPAs

Southeast Legacies was founded by brothers Peter and Anthony Rockliffe TEP, a full STEP member. STEP represents the most experienced and senior practitioners in the field of trusts and estates and some solicitors will study with STEP to acquire specialist knowledge.

Our team includes CILEX lawyers, partner financial advisers and chartered accountants.

We are a family-run legal firm who believe in family values, advising clients from one generation to the next.

Main office:
17 Chatsworth Parade
Petts Wood
Kent
BR5 1DF

Orpington office:
256 High Street
Orpington
Kent
BR6 0LZ

020 8114 7111

contact@southeastlegacies.co.uk