

Lasting Power of Attorney Guide

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Wills – Trusts – SEV of Tenancy – Lasting Powers of Attorney – Court of Protection Deputyship – Pre Paid Funeral Plans

What is a lasting power of attorney?

A lasting power of attorney is a legal document that allows you to choose another person to make decisions for you when you are unable to do so.

This gives you more control over what happens to you if, for example, you have an accident or an illness and can't make decisions at the time they need to be made.

There are a number of ways that you can plan your care for the future; one of those being Lasting Power of Attorney. The purpose is to allow you to make choices and decisions about your future finances and care, in case there is a time when you cannot make decisions for yourself. This can ensure that a person(s) you have chosen has the power to act on your behalf in situations that you have agreed, and they are able to help with the managing of your finances and also with how you are cared for, and that you aren't given treatment that you don't wish to receive.

Lasting Powers of Attorney are just one way to plan ahead. Other decisions that you can make in advance include deciding if you would like to make an advance statement or advance decision about your future care. Making an advance decision or advance statement now can allow you to make decisions in case there comes a time in the future when you cannot. For example, you may decide now that you wish to refuse certain treatment, or make decisions about other care choices

There are two different types of LPA: **property and affairs** LPA and **health and welfare** LPA. Each type covers different decisions and there are separate application forms for each. You can choose to make both types, or just one. You can have the same attorney for both, or you can have different attorneys.

The person or people chosen to make decisions on your behalf are your 'attorneys'.

Property and financial affairs

- managing a bank or building society account
- paying bills
- collecting benefits or a pension
- selling your home

It can be used as soon as it's registered, with your permission.

Health and welfare

- your daily routine, eg washing, dressing, eating
- medical care
- moving into a care home

- life-sustaining treatment

It can only be used when you're unable to make your own decisions.

Benefits of making an LPA

There are a number of reasons you may wish to make an LPA:

- It can be reassuring to know that, if you are unable to make a decision for yourself in the future, your chosen person will make these decisions for you.
- Making an LPA ensures that the person you want to make decisions for you will be able to do so. This prevents a stranger, or someone you may not trust, from having this power.
- An LPA can reduce problems that may occur in the future. It can be more expensive and time-consuming for family or friends to try to gain a similar power in the future.
- Making an LPA can help prompt discussions with your family or others about your future wishes.

Who can make an LPA

To make an LPA you must be over the age of 18. You must also have the mental capacity to make this decision. This means you are deciding for yourself that you wish to make the LPA, and you understand what this means.

Who can be an attorney

You can choose anyone you wish to be your attorney, as long as they are over 18. For a property and affairs LPA they cannot be bankrupt.

It's important to think carefully about who you will appoint. Think about who you trust to make these decisions for you, and also whether the person is reliable and has the skills to carry out the role. You can choose to have more than one attorney.

Most people will choose a relative or close friend, but you can also ask a professional such as an accountant or solicitor. A professional may charge for their time, and you need to name an individual rather than an organisation or company. The person must also be willing and able to carry out the role.

You might also consider appointing a replacement attorney. A replacement attorney is the person who you would want to make decisions for you if your first choice attorney is no longer able or willing to be your attorney.

How an attorney acts

If you choose to have more than one attorney, you must decide how your attorneys will act. They can make decisions together ('jointly'), they can act together and separately ('jointly and severally'), or a combination of the two; these terms are explained further below:

- **Jointly** - this means that the attorneys must always act together, and therefore must agree all decisions and both sign documents.
- **Jointly and severally** - attorneys can act together, but can also act on their own.
- **Jointly in respect of some matters and severally in respect of others** - for certain decisions all your attorneys must agree, but for other decisions they can act independently. For example, selling property or decisions about medical treatment could be for all attorneys to agree, but for day-to-day decisions such as diet or dress they can act on their own.

When making decisions, your attorney must follow the Mental Capacity Act. This means that they:

- must act in your best interests
- must consider your past and present wishes
- cannot take advantage of you to benefit themselves
- must keep all of your money separate from their own.

If the attorney fails to comply, the LPA could be cancelled. If an attorney has taken advantage of you, this will be investigated by the OPG and the person could be prosecuted. Having an LPA in place can therefore offer you protection from potential future abuse.

How I can help

I can advise you on the implications of making a Lasting Power of Attorney together with the issues to consider and advise on any problems which may occur if you do not sign a Lasting Power of Attorney.

We can assist you in the completion and signing of the forms, the serving of notices and the registration procedure.

If you have any queries or require further information please contact me on **07825 331447** or email **info@aj-wills.co.uk** or visit our website **www.aj-wills.co.uk**