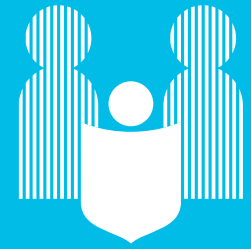


# A practical guide to Lasting Power of Attorney



## Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is a powerful legal document. It allows you to choose people to act on your behalf should you later begin to lose your ability to manage your personal affairs because of physical or mental incapacity. It takes effect, if need be, during your lifetime and is completely separate to a Will.

Creating an LPA gives you the reassurance that you know who'll make decisions for you once you cannot make them yourself. That person will be someone you know and trust to act in your best interests. Having the LPA in place saves considerable expense and time should your family later need to make decisions for you.

Slater and Gordon can offer advice on the types of LPA available and ensure that the correct documents are drafted accurately and witnessed properly and in the correct order. Our specialist lawyers can provide practical and legal guidance throughout the LPA creation and registration process. We can guide you through the process and help you focus on the important aspects to ensure that each document suits your specific requirements. We can also help you understand the role of LPAs within the wider context of estate planning.

### What is a Lasting Power of Attorney (LPA)?

An LPA is a legal document in which you, the donor, appoint one or more people (your attorneys) to make decisions for you. There are two types of LPA: one deals with your property and financial affairs, and the other with health and welfare issues.

### What is the difference between a Lasting Power and an Enduring Power?

LPAs replaced Enduring Powers of Attorney (EPAs) in 2007. It's no longer possible to make an EPA, but existing EPAs made before 1st October 2007 remain valid. A valid EPA can usually be used by the attorney at any time, with the donor's knowledge and permission. However, if you begin to lose your mental capacity to manage your own affairs, your attorney becomes under a duty to register the EPA with the Office of the Public Guardian (OPG). The attorney cannot then use the power of attorney until the registration is complete. EPAs only relate to property and financial affairs.

An LPA can be created at any time while you have mental capacity, but can only be used once it has been registered with the OPG.

### What is a Property and Financial Affairs LPA?

This type of LPA provides your attorney with authority to make decisions regarding your property and financial affairs. It can be created to suit your circumstances and can include, if you wish, restrictions on the powers you grant to your attorney.

Your attorneys will largely be able to make the same decisions as you normally would, such as paying bills, making or selling investments, collecting benefits or selling your home. They cannot however, make substantial cash gifts on your behalf.

A Property and Financial Affairs LPA is legally effective as soon as it's registered with the OPG, if you give consent to your attorney acting for you. While you have the necessary capacity, the LPA doesn't in any way prevent you from continuing to manage your own affairs should you wish. The LPA can only be used by your attorney without your permission once you lose the capacity to make your own decisions.

### What is a Health and Welfare LPA?

This type of LPA provides your attorney with authority to make decisions regarding personal issues, such as where you live or the type of care you receive. It can be expressly tailored to your personal circumstances. You can give your attorney the power to give or refuse consent for medical treatment, including an express statement about life sustaining treatment.

If you've already made a "Living Will" (also known as an Advanced Treatment Directive or Advance Medical Decision) you should seek legal advice on how it will interact with, or be superseded by, a Health and Welfare LPA.

A Health and Welfare LPA must be registered with the OPG before it can be used. The registration may be done at any time. However, unlike a Property and Financial Affairs LPA, this type of LPA can only be used once you no longer have the capacity to manage your affairs yourself.

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## Who can make an LPA?

Anyone aged 18 or over can make an LPA. You must make it as an individual – you cannot make a joint LPA. Anyone making an LPA must have mental capacity when making it.

LPAs cover people in England and Wales. An LPA made here may not be usable in any other country (including Scotland and Northern Ireland).

## Who can be an attorney?

You can choose any number of attorneys to act on your behalf, provided they are 18 or over. A Property and Financial Affairs LPA cannot appoint an attorney who is declared bankrupt at the time the form is signed.

If you appoint more than one attorney, you'll have to decide whether they must act together at all times, or whether they can act independently of each other.

It's really important that your chosen attorneys agree to taking on this role and know what is involved. The attorneys should be people whom you trust completely to act in your best interests.

You can nominate substitute attorneys to act in the event that your first choice attorneys cannot act for any reasons.

## What must your attorneys do?

Before making decisions on your behalf, each attorney must understand and follow the principles, duties and regulations contained within the Mental Capacity Act and the associated Code of Practice. They must always act in your best interests and take due account of your needs.

Wherever possible, your attorneys must take all practical steps to help you make a particular decision. They must also take account of your past actions and present wishes.

Your attorneys must keep your money and your property separate from their own affairs and from those of other people. They must keep full and accurate accounts of all income and expenditure.

## Who else is involved?

**Notified person** – The LPA gives you the option to nominate a person to be notified if the LPA is registered with the Office of the Public Guardian. This person has the right to object if they're concerned about the registration. After registration, they've no on-going involvement in your affairs.

**Certificate provider** – A certificate provider is an independent third party who confirms that at the time you create the LPA:

- You understand the LPA and the powers it grants
- You are not under any pressure to sign it
- You have the necessary mental capacity to create it

**The certificate provider** can be your solicitor, your doctor, or someone who's known you for at least two years and who's not a relative. The certificate provider signs the LPA before your attorneys sign.

## Registering the LPA

Each LPA must be signed by you, your certificate provider, and your attorneys, in that order. You or your attorney can then send it to the Office of the Public Guardian for registration. The OPG's current fee for registration is £110 per LPA. The Notified Person must be informed at this time and has the opportunity to object to the registration.

Overall, the registration process can take around 10-12 weeks. It's therefore preferable to register the LPAs sooner rather than later, so that they can be used immediately if need be.

To make an enquiry without any obligation call us on **Freephone 0800 884 0164** or email us at **UCULawExtra@slatergordon.co.uk**.

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