

Lasting Powers of Attorney

What are Lasting Powers of Attorney?

Lasting Powers of Attorney (LPAs) allow you to appoint someone to make decisions on your behalf. Although we all hope that we will retain our ability to make decisions throughout our lives, loss of mental capacity can happen unexpectedly at any age (for example through an accident or through an illness such as dementia). It is therefore sensible to organise your affairs in case the worst should happen. There are two types of LPA: one for decisions about your health and welfare, and one for decisions about your financial affairs. You can choose to make either one or both types of LPA.

Attorneys

The person you appoint to make decisions on your behalf is called your “attorney”. You can have more than one attorney and you can specify whether they must act together or if they can each act alone. Any attorney that you appoint should be someone that you trust, although they are obliged by law to act in your best interests. It is common to appoint family members as attorneys, but you might also appoint a professional to make financial decisions for you. You can also appoint replacement attorneys who will act if your original attorneys are unable or unwilling to do so.

Health and Welfare LPA

The Health and Welfare LPA allows you to appoint an attorney (or attorneys) to make decisions about your health care and any medical treatment you might receive. There is a specific section in the LPA where you can indicate whether your attorney(s) should have power to give consent or refuse consent to you receiving life sustaining treatment. Attorneys appointed by a health and welfare LPA are only entitled to make decisions on your behalf if you lack the capacity to make those decisions.

Financial Affairs LPA

The Financial Affairs LPA allows you to appoint an attorney (or attorneys) to make decisions about matters such as running your bank accounts, paying your bills, making or selling your investments and buying or selling your house. You can indicate in the LPA whether you want your attorney(s) to be able to make decisions as soon as the LPA is registered or only after you have lost capacity to make those decisions. If your attorneys are able to make decisions as soon as the LPA is registered, they must still have your consent to making decisions whilst you have mental capacity.

Why make LPAs?

If you do not have an LPA and you lose capacity your family and friends may need to make an application to Court to sort out who could make decisions on your behalf. This can be time consuming and costly. By making an LPA you exercise a choice about the people who can make decisions on your behalf.

You can only make an LPA if you are over 18, if you are mentally capable of doing so and if you understand the effect of the LPA. If you lose capacity, it will be too late to make an LPA.

Registration

LPAs must be registered with the Office of the Public Guardian (OPG) before they can take effect. There is a fee payable to the OPG for registration, which is currently £82 for each LPA. If you have a low income or are receiving benefits this fee may be waived in part or in full.

Enduring Powers of Attorney

If you have an existing enduring power of attorney, this will remain valid. However, enduring powers of attorney do not give attorneys power to make decisions about health and welfare matters. It is no longer possible to make new enduring powers of attorney.

Advance Decisions

An advance decision allows you to express a decision about specific medical treatment which you may require in the future. If you lose capacity, a valid advance decision should be treated as your contemporaneous consent or refusal to that specified treatment at the time it is required. An advance decision takes effect as soon as it is signed and there is no need to register it with the OPG. However, it is limited to the specific matters set out in the decision, whereas a Health and Welfare LPA allows your attorneys to make decisions about wider issues regarding your medical treatment (some of which you may not have considered previously).

How do I make a valid LPA?

To make a valid LPA there are specific forms which must be filled in and signed in a particular order before being registered with the OPG. The forms must be signed by you, by your attorney(s) and by any replacement attorneys. The form must also be signed by a "certificate provider". The certificate provider is an impartial person who can certify that you have capacity to make the LPA. It might be a professional such as a solicitor or a doctor, or it might be a friend or colleague who has known you well for at least two years. You might also choose people to receive notice of your LPA. This is not compulsory but it does give the people notified a chance to raise any objections to your LPAs being registered if they have concerns.

How we can help

We can assist with preparing, executing and registering LPAs for you. We can also advise on appropriate attorneys and can draft the wording for any preferences, instructions or guidance which you might want to include in your LPA to assist your attorneys in making decisions on your behalf. We can also act as certificate provider if required and appropriate.

If you have any questions or would like further information, please contact [Charlotte Searle](mailto:c.searle@nealeturk.co.uk) (c.searle@nealeturk.co.uk or 01256 473013)