



## What is a Lasting Power of Attorney?



A Lasting Power of Attorney (LPA) is simply a legal document whereby you (the 'donor') can give one or more persons (the 'attorney/s') the authority to make certain decisions on your behalf, in the event that you are unable to make decisions for yourself.

There are two types of LPA available and you can choose to make one or both types. The two types are:



### Property and Financial Affairs LPA

This allows your attorneys to deal with your property and finances as you specify. It will allow them to pay your bills or collect your income. It would also allow them to buy or sell property on your behalf and to run your bank accounts and your investments.



### Health and Welfare LPA

This allows your attorneys to make decisions regarding your welfare and health care if you have lost mental capacity.

It would allow them to decide on where you live, the type of healthcare and medical treatment that you would receive, including life sustaining treatment. It would also cover day to day matters such as your diet and daily routine.

LPA's replaced Enduring Powers of Attorney (EPA) from 1 October 2007 although any EPAs made before that date are still effective



### Why should I have an LPA?

If you lack the capacity to make a decision and don't have an LPA, it may be necessary for somebody to apply to the Court of Protection for an order to act on your behalf. This process can be very time consuming and costly. It can also cause disagreements between family members, especially if they have different ideas about what is best for you.

A sensible way to avoid this situation is for you to take control by expressing your wishes in the form of an LPA and making your own decisions now whilst you still can. Our experts can talk you through all of these decisions and processes, which will make provisions to safeguard your financial needs and future welfare.



### Who can I appoint as my attorney?

The person/s appointed should be at least 18 years of age and not bankrupt (for the property and financial affairs LPA). An attorney can be a family member, another trusted person or a professional advisor such as your solicitor. You should choose people who are responsible, trustworthy and have the appropriate skills to make the decisions you set out in the LPA.

### How is an LPA created?

An LPA is created once you and your attorneys have signed the document in front of an independent witness, an appropriate person has certified that you understand the nature and scope of the LPA and that you have not been unduly pressured into making it. Once the LPA is created, the document would need to be registered with the Office of the Public Guardian (OPG) in order for it to be used.

### How do I prepare an LPA?

Forms can be obtained from the OPG if you wish to complete them yourself, however you must ensure that the documents are signed, witnessed and dated correctly before the documents are submitted for registration. We recommend that a solicitor should be instructed to prepare the LPA, as if there is any error in the document it will be rejected by the OPG on registration. If this is the case you may have to prepare a new document and pay another application fee.

If there are issues regarding mental capacity, it may be necessary to instruct a medical practitioner to conduct an assessment in accordance with the Mental Capacity Act 2005 before the LPA is created to avoid challenges being made at a later date. If a solicitor is instructed they can advise you on any complex matters.

### When can my LPA be used?

The health and welfare LPA can only be used once you have lost mental capacity.

The property and financial affairs LPA can be used whilst you still have mental capacity to act as well as when you have lost capacity. This can be helpful because while you have mental capacity you are in control of all decisions that affect you but you may choose to ask your attorney to deal with your affairs for you for other reasons e.g. physical difficulties getting to the bank or using the telephone.

### Can I change my mind once the LPA is in place?

You can cancel your LPA at any time provided you have the mental capacity to do so, even if it has been registered with the OPG. If not cancelled the LPA will last until you die.

If you decide to change your attorneys, you will need to cancel your current LPA and make a new document. Again it will need to be registered before the document can be used.

### How long will the LPA take to put in place?

Provided the 'donor' has mental capacity, it is just a matter of preparing the LPA and signing it. There is a time lapse between signing and registering the document with the OPG as there is a statutory waiting period to allow time for any third party objections to be raised. The registration process usually takes around 8 – 12 weeks.

For further information please contact a member of our team on:

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To find out more and view our other services please visit our website: [www.sasdaniels.co.uk](http://www.sasdaniels.co.uk)



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