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**Lasting Power of Attorney**

**DO I NEED ONE?**

Nobody knows what the future holds, and unforeseen circumstances may arise that can leave us vulnerable and unable to make decisions for ourselves. For example, failing health or an unexpected accident may mean that you are no longer able to take care of your own affairs or make decisions for yourself.

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that enables you to appoint one or more trusted persons of your choice to handle your affairs and make crucial decisions upon your behalf, either now or in the future, should you become incapable. More information is provided on page 3.

There are two separate types of LPAs: an LPA for property and financial affairs and an LPA for health and welfare.

- An LPA for property and financial affairs, permits your Attorney(s) to handle your property and financial matters, such as paying bills, managing investments, and selling property should you become physically or mentally unable to handle your financial affairs yourself. More information is provided on page 3.

- An LPA for health and welfare, allows your appointed Attorney(s) to make decisions related to medical treatment, care, and living arrangements when you are unable to make those choices yourself because of mental incapacity. You also have the option to give your appointed Attorneys the right to give or refuse consent to life sustaining treatment upon your behalf. More information is provided on page 4.



## Why should I set up a Lasting Power of Attorney?

**Planning for the future:** An LPA allows you to plan for the possibility that you may become mentally or physically incapable of managing your affairs in the future. By creating an LPA early, you can choose someone you trust to act on your behalf when needed.

**Maintaining control over decisions:** By appointing an Attorney(s), you can ensure that someone you know, and trust will handle your affairs rather than leaving it up to a court-appointed representative if you become incapacitated. This can provide peace of mind and reduce the burden on your loved ones.

**Protecting your interests:** An LPA ensures that someone you trust is looking out for your best interests and can make decisions in accordance with your wishes, even if you are unable to communicate them directly.

**Avoiding potential disputes:** By specifying your chosen Attorney in the LPA, you can help prevent disagreements among family members about who should make decisions on your behalf, reducing the likelihood of legal disputes.

**Handling financial matters:** With an LPA for property and financial affairs, your appointed Attorney can manage your finances, pay bills, handle investments, and make other financial decisions on your behalf.

**Making healthcare decisions:** With an LPA for health and welfare, your appointed Attorney can make decisions about medical treatment, care arrangements, and other healthcare-related matters according to your previously expressed wishes or best interests.

**Personalisation and flexibility:** An LPA allows you to customise the powers given to your Attorney(s), tailoring the document to your specific needs and preferences.

**Cost-effective planning:** If you lose your mental capacity and do not have an LPA, then your family or someone else (such as Social Services) would have to apply to the Court of Protection (which oversees the affairs of people who are not mentally capable of doing so themselves) for the appointment of a Deputy to look after your affairs. This is an inconvenient, lengthy, and costly process compared with the ease of thinking ahead and preparing an LPA now.

## Lasting Power of Attorney for Property and Financial Affairs

A Lasting Power of Attorney (LPA) for property and financial affairs is a legal document that allows you to appoint someone you trust (referred to as the "Attorney") to make decisions on your behalf regarding your property, financial affairs, and related matters. This may be due to ill health, old age, an accident or because you lack mental capacity.

An LPA for property and finances must be created while you are still mentally capable. If you lose your mental capacity without having set up an LPA, your financial and property affairs might need to be managed through a court-appointed Deputyship, which can be a more complicated, timely and costly process.

An LPA for property and finances grants the appointed Attorney(s) the authority to manage various financial matters and make decisions on your behalf, such as:

- Managing bank accounts and financial transactions.
- Paying bills and expenses.
- Buying, selling, or renting property.
- Managing investments and other financial assets.
- Dealing with tax-related matters.
- Making decisions about pensions and benefits.
- Handling legal and administrative matters related to your finances.

An LPA for property and finances can generally be used by your Attorney(s) upon your behalf should you lose either your physical or mental capacity. However you can also set them up so that they can be used when you have mental capacity but need your Attorney(s) to look after or manage your financial affairs upon your behalf because of physical ill health or because it is simply more convenient.

An LPA for property and finances provides a legal framework to ensure that your property and financial affairs are managed properly and in your best interests when you are unable to do so yourself.



## Lasting Power of Attorney for Health and Welfare

A Lasting Power of Attorney (LPA) for health and welfare is a legal document that allows you to appoint someone else (referred to as an "Attorney") to make decisions on your behalf regarding your health and personal welfare matters. This is especially important in situations where you become incapable of making these decisions yourself due to illness, injury, or other incapacitating circumstances.

The LPA for health and welfare typically covers a range of decisions related to your well-being, including:

**Medical treatment decisions:** Your Attorney(s) can make decisions about medical treatments, procedures, and interventions. This could involve choices about surgery, medication, or other healthcare options.

**Care and living arrangements:** Your Attorney(s) can decide where you should live, whether that is at home, in a care facility, or with a family member.

**Social activities and daily routines:** Your Attorney(s) can make decisions regarding your daily activities, social interactions, and recreational pursuits.

**End-of-life decisions:** The Attorney can make decisions about your care and treatment if you are nearing the end of your life. The Attorney can also be given the authority to make decisions about the withdrawal or continuance of life sustaining treatment.

It is important to note that an LPA for health and welfare can only be used when you lack the mental capacity to make decisions for yourself. An Attorney appointed through an LPA for health and welfare has a significant responsibility and a duty to act in your best interests. You can provide specific instructions or preferences in the LPA to guide the Attorney's decision-making.

Creating an LPA for health and welfare ensures that your wishes and best interests are upheld even if you're unable to communicate or make decisions on your own. It is a legally binding way to ensure that a trusted person is empowered to make decisions that align with your values and preferences regarding your health and well-being.

## FAQ

### Who can act as my Attorney?

Anyone who is over 18 years old can be nominated. It should be someone you trust implicitly and who will put your needs first. It is quite normal to appoint a trustworthy and responsible member of your family, who lives close enough to you to be able to give the necessary assistance. In certain circumstances, it can be helpful to appoint a solicitor to act as your Attorney.

### Can I have more than one Attorney?

Yes, you can appoint more than one Attorney. If you appoint more than one person to act as your Attorney, they can be appointed to act either 'jointly', 'jointly and severally' or jointly in respect of some matters and jointly and severally in respect of others. If they are appointed to act 'jointly', then this will mean that they all need to always act unanimously (for example all signing cheques). If they are appointed to act 'jointly and severally' then any of them can act separately or together. We would normally recommend that if you appoint more than one Attorney, then they should be appointed jointly and severally.

### Can I restrict the powers I give to my Attorney or give them Guidance?

Yes. If you wish, you can restrict your powers to specific acts such as managing your investments, selling your house or simply paying routine domestic bills. Alternatively, if you choose to give them wider powers, the Attorney(s) can do anything which you would have been able to do yourself.

You can also provide your Attorney with guidance, preferences, and your views on how your affairs should be managed. This can be particularly important when setting up an LPA for health & welfare.



## FAQ

### Registration at Court?

Your appointed Attorney(s) cannot act upon your behalf until the LPA has been registered at the Office of the Public Guardian. Once registered, your Attorney(s) are permitted to act upon your behalf should this be desirable or indeed necessary or, in the case of an LPA for health & welfare, when you lack mental capacity.

### Duties on my Attorney(s)

It is important to note that being an Attorney under an LPA is a significant responsibility. Your chosen Attorney(s) are legally bound to follow the principles and duties set out in the Mental Capacity Act (MCA) 2005. Some of the key duties include acting in your best interests, respecting your wishes and values, managing your finances responsibly, keeping accurate records, and avoiding any conflicts of interest etc.

### Conclusion

Creating an LPA for your property and finances and health & welfare is essential for safeguarding your interests, ensuring your wishes are respected, and providing a smooth and efficient process for decision-making if you become incapacitated. It is a proactive step that offers you and your loved ones security and peace of mind during challenging times.

If you would like further information on Lasting Powers of Attorney, please contact the Private Client Team at Wall James Chappell

Tel: 01384 371622 | [www.wjclaw.co.uk](http://www.wjclaw.co.uk)



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