



Questions, questions: Common queries about Powers of Attorney

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What is a Power of Attorney?

A Power of Attorney is a legal document by which one person (the Donor) gives another person or persons (the Attorney) power to act on their behalf and in their name in respect of their financial affairs.

For example, the power for a son/daughter to use a parent's bank account.

What is a Lasting Power of Attorney?

If a person executes an **ordinary** Power of Attorney, then the power is automatically cancelled if the Donor loses the mental capacity to manage their own affairs – the point at which the power could be most needed.

From 1 October 2007, it has been possible to make what is known as a **Lasting Power of Attorney (LPA)**.

The procedure is simple and, once registered, the Attorney can act on behalf of the Donor without interference. The power carries on should you become unable to make your own decisions and, if you choose, can give another person the ability to make decisions about your future care and medical treatment, as well as your finances.

There are two types of LPA:

Property and Affairs LPA – in which you would give your attorney authority to deal with your property and finances

Personal Welfare LPA – in which you would give your attorney authority to make welfare and health care decisions on your behalf. This can only be used when you lack mental capacity to make these decisions yourself

When can a LPA Attorney start to make decisions for me?

The power is valid once it has been:

- signed by you and your Attorney
- certified by a person confirming that you understand the nature and scope of the LPA and you have not been pressured into making the power
- registered with the Office of the Public Guardian

The Property and Affairs LPA can be used both when you have capacity to act as well as if you lack mental capacity to make a financial decision. The Personal Welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

When you decide the time has come to allow your LPA Attorney to start work, the Lasting Power of Attorney must be registered with the Office of the Public Guardian.

You can register the document yourself or instruct a solicitor to register it for you. If your LPA Attorney applies to register the LPA the Office of the Public Guardian will notify you to ensure that you are aware they have done so and that you are in agreement. There is a registration fee payable and the process takes approximately six to eight weeks.

Can I make a LPA and continue to make my own decisions?

The fact that a LPA has been created and signed does not prevent you from dealing with your financial affairs whilst you are still mentally/physically capable.

Can I make a LPA and cancel it later if I change my mind?

Yes. You can cancel the LPA, even after it has been registered, if you have the mental capacity to do so. There are formal steps that you would need to take. If the LPA has been registered, you will need to ask the Office of the Public Guardian to remove it from the register of LPAs.

Can my LPA Attorney make a Will for me or alter my existing Will?

Your LPA attorney cannot usually make or alter a Will for you so you should ensure you have an up to date Will in place.

Can my LPA Attorney give my assets away?

There are strict rules on the gifts which a LPA attorney can make, on which you should seek advice from a solicitor.

Why should I make a LPA?

For peace of mind. Knowing that you have chosen someone to deal with your affairs should you be unable to do so (whether temporarily or permanently) can be a comfort.

A small initial outlay now can save a lot of time, trouble and expense in the future, not least in avoiding the necessity for a Court of Protection Deputyship Order in the event of mental incapacity.

Your family will be spared difficulties in the future in the event that you become unable to manage your affairs.

No one can foresee the future. Sadly, mental incapacity can literally occur overnight, for instance as a result of a stroke. The LPA may also be required because of physical incapacity, for instance as a result of an accident or illness.

How do I make a Lasting Power of Attorney?

Please consult a solicitor, as the LPA must be drawn up in a prescribed manner. Shoosmiths will be pleased to help.

I've decided to make a LPA. What do I need to think about?

Decide who you wish to appoint as your Attorney or Attorneys (e.g. Spouse and/or Children). Your Attorney should be over the age of 18 and somebody you trust. For a Property and Affairs LPA, they must not be bankrupt. You can appoint more than one Attorney to act on your behalf.

If there is more than one Attorney, decide whether they should be appointed to act jointly (all must act and sign together) or jointly and severally (any one of them can act and sign on your behalf). They can also be appointed to act jointly in respect of some matters, and severally in respect of others, although you should seek advice on this as it may cause problems when using the power.

Jointly offers extra security, but jointly and severally is much more flexible. For example, if one Attorney is ill or on holiday, the other Attorney could still sign for you. If you appoint two Attorneys 'jointly' and one dies, then the other cannot continue to act as Attorney. If you appoint just one Attorney you may

wish to include an appointment of a substitute Attorney to come into effect if your first choice Attorney dies.

Consider whether you wish to include any restriction on the power, e.g. limit the power to particular property or to a particular aspect of your financial affairs. Other restrictions and/or conditions you include might be that the power is not to take effect unless you become mentally incapable or that the Attorney is not allowed to make gifts on your behalf.

Consider who should be notified when the power is to be registered. You can choose up to five people to be notified when the LPA is registered with the Office of the Public Guardian. Once the power is registered, it can be used by your attorney. It is an important safeguard, as those notified can raise concerns on your behalf. It is important that you think carefully about the people you choose.

Consider who should be your Certificate Provider. This must be someone over 18 years of age, and who you have known for at least two years, or someone who, by reason of professional skills and expertise, is considered competent to make the judgements necessary to give the certificate, such as a solicitor or doctor.

For more information please contact:



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