



BPA Associates Ltd

Lasting Power of Attorney ('LPA')

What is a Lasting Power of Attorney (LPA)?

A LPA is a legal document that allows you to appoint people you trust to look after your affairs. There are two areas that you will need to consider:

1. Property & Financial Affairs - you appoint people you trust to look after all your finances (bank accounts, investments, property etc).
2. Health & Welfare - you appoint people you trust to look after your welfare requirements (daily care, medical treatment etc).

You can have a LPA to deal with just one or both of the above areas.

Who can you choose as an Attorney?

Your Attorney should be someone you know well and trust (it is also possible to appoint a professional attorney). They must be at least 18 years old at the time the LPA is signed by the Donor and must not be bankrupt. You can choose more than one person to be your Attorney.

Choosing more than one Attorney

If you choose more than one Attorney, you need to decide how you wish them to act - jointly, jointly and severally or jointly in respect of some matters and jointly and severally in respect of others.

Jointly - Attorneys must all join together when making decisions. If one Attorney is unable or unwilling to act (for example because they are deceased or mentally incapacitated) the remaining Attorneys are not able to act.

Jointly and Severally - Attorneys can act together or independently of each other, allowing greater flexibility and the opportunity for an Attorney to act even if another Attorney is unable to do so.

Jointly in respect of some matter and Jointly and Severally in respect of others - It is possible for the Donor to specify in which circumstances the nominated Attorneys must act together, and/or in which circumstances they may act independently of each other.

Attorneys are required by law to act in the best interests of the Donor (or at their direction whilst the Donor possesses the capacity to give that direction).

Choosing a Replacement Attorney

You can choose a replacement Attorney in case your Attorney cannot or does not want to act for you.

When can an Attorney act?

Property & Financial Affairs - Your Attorney can only act once the LPA has been registered with the Office of the Public Guardian (OPG). If you choose, you can include a restriction so that they can only act if you are mentally incapable.

Health & Welfare - Your Attorney can only act once the LPA has been registered with the Office of the Public Guardian (OPG) and you are no longer mentally capable to make such decisions.

Restricting the powers of your Attorney and/or giving them guidance

You can put legally binding instructions on your Attorney's powers and the scope of their authority. You can also give preferences to your Attorneys in the LPA. Preferences will not be legally binding, but may be useful when they have to make decisions on your behalf.

Nominating a Person to be Told

You can choose up to five people to notify about your LPA when it's about to be registered. These should be people who know you well and would be willing to raise concerns about your LPA. They can object to the LPA if they think you were under pressure to make it or if they think fraud is involved. Nominating a named person (s) is optional.

Certificate Provider

An independent person must complete the Certificate Provider section of the LPA to confirm that you are making the LPA of your own free will and that you understand its purpose and the powers you are giving the Attorney. This is an important safeguard and your LPA cannot be registered without this being completed.

Paying the Attorney

Attorneys are entitled to 'out-of-pocket' expenses incurred as a result of carrying out their duties. If you wish to pay your attorney a fee for acting then it will need to be recorded.

Registering the Lasting Power of Attorney

The document cannot be used until it is registered. Either you or your chosen Attorneys can register it. There will be a fee payable to the OPG to register your LPA, currently £82 per LPA (unless you are entitled to a fee exemption or remission).

Cancelling your LPA

You can cancel your LPA even after it has been registered providing you have the mental capacity to do so. You must advise your Attorneys if you do and, if it is registered, you must ask the OPG to remove it from the register.

Property & Financial Affairs - powers granted to Attorneys

The standard form does not have any restrictions or conditions (known as instructions). If the donor makes no restrictions the attorneys can do anything that the donor can do including:

1. Managing bank accounts including opening and closing accounts.
2. Claiming and receiving benefits and other payments like pensions, rebates etc on behalf of the donor.
3. Paying bills, household expenses, care fees etc.
4. Buying, selling and renting the property of the donor.
5. Making gifts on the donors behalf - however this is restricted to making gifts to people who are related or connected to the donor for special occasions i.e. birthdays, weddings etc.
6. Make decisions concerning any investments held by the donor.
7. Making all tax returns and adjusting and settling any claims for tax.
8. Paying for private medical care.
9. Purchasing a vehicle or any other equipment which may be required for the benefit of the donor paid from the donor's income or capital.
10. Implementing tax planning or similar arrangements; however an application to the Court of Protection may be required in certain circumstances.

Health & Welfare - powers granted to Attorneys

The standard form does not have any restrictions or conditions. If the donor makes no restrictions the attorneys can do anything that the donor could do including:

1. Making decisions about the donor's permanent residence.
2. Make decisions on any care that is required and the level of care.
3. Consent or refuse medical treatment including medical procedures, therapy etc.
4. Make decisions on the donor's diet, dress and personal appearance.
5. Take the donor on holiday, choosing the donors social and cultural activities.
6. Organising work, education or training for the donor.
7. Assessments for and provision of community care services.
8. Rights of access to personal information about the donor.
9. Consenting to the donor being involved in certain areas of research that meets the strict rules set out by the Act.
10. The Donor can also choose whether to give the Attorney(s) the power to refuse life sustaining treatment.

