

LASTING POWER OF ATTORNEY (LPA)

WHY IS A LASTING POWER OF ATTORNEY USEFUL?

Much like a will, it is a legal document that authorises one or more individuals to carry out your wishes when you are unable to do so. The person creating the power is known as the donor; those executing it are the attorneys.

However, unlike a will, which is only activated on death, a lasting power of attorney or LPA can be implemented if you become mentally or physically incapacitated, such as through illness or accident, and are therefore unable or unwilling to make decisions yourself.

LPAs provide the ability for you to choose who you want to be responsible for looking after your affairs when you need them to do so.



HOW DOES AN LPA DIFFER FROM OTHER SIMILAR LEGAL DOCUMENTS?

An LPA continues to be recognised even in the event of mental or physical incapacity, unlike a general power of attorney.

Unlike enduring powers of attorney, which only cover financial affairs, LPAs provide donors with the additional ability to set out their preferences in matters of health and welfare.

HOW TO COMPLETE AN LPA

STEP 1.

Decide what you would like your LPA to cover and whether you wish to complete the forms using the government's online tool or ask a legal adviser to prepare them for you.

There are two forms of LPA available; one covers the area of 'property and financial affairs' and the other 'health and welfare'. Each is submitted and registered separately.



Property and financial affairs LPAs cover the buying and selling of assets; tax administration; the operation of bank and building society accounts and the collection of benefits.



Health and welfare LPAs cover decisions related to living accommodation, any care requirements, the approval or rejection of medical procedures and other general requests relating to your everyday care.

It is worth noting that a property and financial affairs LPA can be used prior to a loss of mental capacity if you decide that it is needed, whereas a health and welfare LPA can only be used if you have lost the ability to make decisions yourself.

STEP 2.

Decide on the main individuals required to register an LPA.



Donor

This could be yourself or someone else if you are assisting them. However, the individual for whom the LPA is being registered must have sufficient mental capacity at the time of signing to understand what they are doing.



Attorney

The person/s who will execute the LPA and be responsible for looking after your affairs when needed.



Certificate provider

This is an independent individual who confirms that the donor is not being coerced or unduly influenced to implement the LPAs and that they understand what they are doing. The individual must have known the donor for two years or be a person who has the relevant professional skills and expertise to enable them to make a judgement about the donor's mental capacity and understanding.



Witness

Confirms that the signatures of the donor and attorneys were made by the named individuals.



Persons to be told

Individuals who are informed that the LPA has been registered and can then raise any concerns that they may have; these are often friends and family.

STEP 3.

When completing the form or discussing LPAs with a legal adviser we suggest the following are also considered:



Replacement attorneys

In case one or all of your original attorneys are incapacitated, replacements can take their place and continue to execute your LPA. If you do not appoint replacement attorneys, then if your attorney(s) can no longer act for you, such as through illness or injury of their own, the LPA will end.



If multiple attorneys are selected you need to decide how they should make decisions; whether jointly, severally or a combination of the two. If you assign two attorneys to act jointly and one of them dies, the remaining attorney will be left unable to execute your preferences and instructions. However, if you had assigned two attorneys to act severally and one dies, the remaining attorney could continue to execute the directives of the LPA.



The health and welfare LPA requires you to decide whether your attorneys can authorise or decline any life-sustaining treatment.



LPAs contain the ability for you to make explicit any preferences or instructions you have for your attorney/s.



- Preferences are outcomes which the attorney/s should seek to achieve if circumstances allow; for example: *'I would like to be placed into a home that would allow me to bring my dog with me'*.
- Instructions are outcomes that must be met; for example: *'My attorneys must ensure that if a home cannot be found that will allow me to bring my pets, they will be provided with adequate accommodation'*.
- If you wish your attorneys responsible for your property and financial affairs to be able to continue to use a discretionary investment manager, then an appropriate wording should be added to the preferences to allow them to do this. Without this it will no longer be possible for the manager to act.



Ensure that all the sections of the LPAs are fully completed and have been signed and witnessed where needed before sending them for registration to minimise the chances of the forms being rejected or revoked.

Please note that Bloomsbury does not give legal advice and any comments or observations on legal matters are merely to provide general guidance.

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