

A Lasting Power of Attorney (LPA) is a legal document which has replaced the Enduring Power of Attorney (EPA). It allows you (the 'donor') to nominate someone you trust (the 'attorney') to make decisions on your behalf regarding your money, property and welfare. Anyone over the age of 18 can make an LPA, if they have the capacity. There are two types of LPA:

Lasting Power of Attorney – Property & Affairs (LPA PA)

This allows you to nominate someone to make decisions on your behalf about your money and your property. Your attorney can also act for you while you still have the capacity to make your own decisions e.g. if you are out of the country for long periods of time or have physical difficulty when managing your affairs.

Lasting Power of Attorney – Health & Welfare (LPA HW)

This allows you to nominate an attorney to look after your physical wellbeing. Decisions under this form of LPA may be about whether to give or refuse consent to medical treatment or about where you live. Your LPA HW attorney will only be able to make these decisions for you when you no longer have mental capacity, for example if you are unconscious or after the onset of conditions such as dementia. An LPA HW attorney cannot refuse life-sustaining treatment unless you say so in your LPA.

Who can be my attorney?

Your primary consideration should be that your attorney is someone you can trust to make decisions in your best interests. You can choose anyone over 18 who is not bankrupt at the time of signing and you can appoint as many as you wish. If appointing more than one attorney you must decide if you want them to act jointly or jointly and severally. You can also appoint replacement attorneys to act for an attorney who cannot make decisions on your behalf.

When can it be used?

LPAs have been available since 1st October 2007. Once you have created an LPA, it cannot be used, even in an emergency, until it has been registered with the Office of the Public Guardian (OPG).

What if I have already made an Enduring Power of Attorney?

If you already have a valid EPA, the introduction of the LPA will not invalidate it. You can choose to revoke your EPA and replace it with an LPA if you wish. Or you can keep your EPA and create an LPA HW as well to look after your physical wellbeing. However, if you are wealthy and making gifts, there could be an advantage to switching to an LPA PA.

Does anyone else need to be involved?

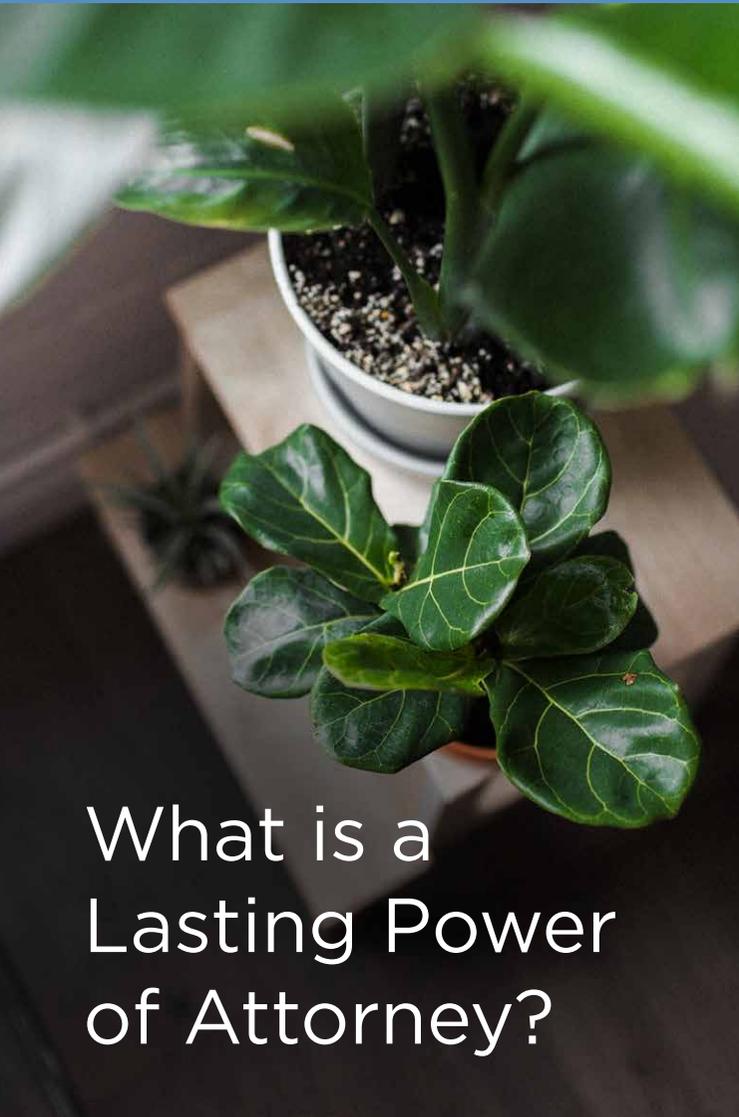
As well as appointing attorneys, you can decide if you want up to 5 people to be notified (or no-one at all) when an application is made to register your LPA. This is one of the key safeguards. The people you nominate will be able to object to the registration. This can prevent an LPA being used where the donor is pressured into signing it. You can nominate both family and friends.

What is a Certificate of Capacity?

A statement confirming that you are capable is required and included in every LPA. You will need to nominate a certificate provider to confirm that you understand the LPA and that you are not under any pressure to make it. There are two types of certificate provider you can choose from:

A) Knowledge Certification - this can be someone who has known you personally for at least 2 years but is not related to you or your attorney(s); or

B) Skills Certification - this is someone who considers themselves to have the relevant professional skills and expertise to certify your LPA. This could be a registered healthcare professional; solicitor, barrister or advocate; registered social worker; or an Independent Mental Capacity Advocate (IMCA). This list is not exhaustive.



What is a Lasting Power of Attorney?

Wills, Trusts and Probate

What is a Lasting Power of Attorney?

When does my LPA have to be registered?

Before the LPA can be used it must first be registered with the OPG. If you have lost capacity and it has not already been registered, it will have to be registered at that stage. If you have prepared both types of LPA then both will have to be registered. Those people that you have nominated will receive formal notification of registration. There will be a court fee payable and this is currently £82 for each type. Registration can take up to 12 weeks. We therefore suggest you should register all LPAs immediately to avoid any problems should you need to use it in an emergency and it is not registered. During this time your attorney cannot act for you.

Who can register my LPA?

Either you, as donor or your attorneys can apply to register your LPA. It is envisaged that donors would register their own LPAs and many do so. If you apply to register the LPA then the OPG inform the attorneys and vice versa.

Who could object to the LPA being registered?

You, your attorney and those nominated can object on the following grounds:

- That the donor or attorney is bankrupt or about to be;
- That the donor or attorney is dead;
- There has been a divorce or dissolution of a civil partnership between the attorney and the donor (unless the LPA provides for this);
- That the attorney lacks the capacity or has disclaimed their appointment;
- That the donor was under pressure to make the LPA; or
- That the attorney proposes to behave in a way that would not be in the donor's best interest or is outside their authority.

Does registering the LPA mean that I cannot look after my own property and affairs?

Registering an LPA does not mean that you are incapable. You can still manage your own assets or you can delegate all or part to your attorneys. If you are losing mental capacity the attorneys are under a duty to consult with you and to assist you in making those decisions that you are capable of making. Any decision made on your behalf must be in your best interests.

Does incapacity have to be registered?

Whilst the LPA must be registered before it can be acted on, no further action is needed when the donor becomes mentally incapacitated. With the LPA PA you can state that you do not wish it to be used until you become incapacitated, we do not recommend this as problems could arise if you become physically incapable or unexpectedly detained out of the country. It will be up to your attorney to decide when they believe you have lost the capacity to make decisions. You can, if you wish, include a statement requiring medical evidence to be given.

Can my attorneys make gifts?

Yes, but only limited gifts and only as long as you have not excluded this right in your LPA. Other gifts can only be made with the permission of the Court of Protection.

When does my LPA come to an end?

You can revoke your LPA while you still have the capacity to make decisions otherwise it will be valid until the donor dies.

Contact Us

Call our Wills, Trusts and Probate Team on **01733 882800** or email info@hcsolicitors.co.uk to find out how we can help.

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The information contained in this leaflet gives you a summary of a Lasting Power of Attorney. Please contact a member of the Wills, Trusts and Probate team on 01733 882800 or visit our website for more detailed information at www.hcsolicitors.co.uk.

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