
Lasting Power of Attorney - Guidance for the Donor

If you are thinking about making a lasting power of attorney, you will firstly need to think about who you would like to act as your attorney(s), and how you would like them to make decisions for you. This guide sets out things that you need to consider when appointing your attorney(s), the process and stages, and will also help you tailor your power to reflect your needs and wishes.

TYPES OF POWER OF ATTORNEY

Property & Financial Affairs

This kind of power will allow your chosen attorney(s) to aid you in making decisions, or make the decisions should you not be able to, in connection with matters relating to your property and your finances.

This could involve selling your property should you need to go in to care, paying for your care fees and organising the day to day running of your accounts such as paying utility bills and for your shopping.

Health & Welfare

Your attorney can only use an LPA for health and care decisions only when you no longer have mental capacity, whereas a Property & Financial Affairs power allows attorneys to act both when you do have capacity should you need them to, and also when you no longer have capacity.

A Health & Welfare power allows your attorney to make decisions about things such as where you should live should you need to go in to a care home, your medical care and you can also give permission for your attorney to make decisions about life-saving treatment.

CHOICE OF ATTORNEY

Consider the following when choosing your attorney(s):

- They must be over 18 years of age.
- They can be a family member (it is common to appoint partners and children), friends or your professional adviser.
- They must be trustworthy and possess appropriate skills, so you are confident they will make good decisions on your behalf.
- If you are making a property and financial affairs power, they cannot be bankrupt or subject to a debt relief order.
- If you want to appoint more than one attorney, they should get on with each other, or are likely to do so.

- You can appoint one attorney, but it is advisable to appoint more than one to lessen the chance of misuse of the power and ensure continuity in case one attorney cannot act.
- They must agree to be your attorney(s) and understand the role they will be taking on.
- They must follow special rules set out in the Mental Capacity Act 2005, make decisions in your best interests and follow guidance contained in a Code of Practice. All this is set out in our information guide which we will provide to your chosen attorney(s).
- They will need to sign the lasting power of attorney document accepting their role and their responsibilities.
- You will need to give us the full name, address, and date of birth of your attorney(s).

HOW DO YOU WANT YOUR ATTORNEY(S) TO OPERATE IN THEIR ROLE?

If you have more than one attorney, you can appoint them to act:

- (i) Jointly, i.e. always together; or
- (ii) Jointly and severally, i.e. together and independently so that they can sometimes sign together and sometimes separately; or
- (iii) A combination of (i) and (ii), so some decisions can be made jointly and other decisions jointly and severally.

Joint appointments reduce the risk of misuse or abuse of the power, although it can delay decisions or if they cannot agree, it will prevent a decision from being made. If your attorney should die, lose capacity or become bankrupt (if a property and financial affairs LPA), the LPA can no longer be used, unless the original remaining attorney(s) are reappointed, or replacement attorney(s) are appointed.

If you appoint your spouse or civil partner, dissolution of the marriage or civil partnership terminates the appointment of your spouse/civil partner, unless you have indicated otherwise.

DO YOU WANT TO APPOINT REPLACEMENT ATTORNEYS, AND IF SO, WHEN?

If you want only one person to act, you should consider appointing a replacement attorney, if your sole attorney cannot act.

You can also appoint a replacement when you have more than one original attorney, and will need to consider whether you want them to step in immediately any of the original attorneys cannot act, or when all original attorneys are unable to act.

Your choice of replacement attorney should be considered in the same way as your original attorney.

DO YOU WANT TO PLACE ANY CONDITIONS OR RESTRICTIONS ON THE ATTORNEYS YOU ARE APPOINTING?

You may wish to place conditions or restrictions on when and how your attorney(s) act for you, for example limiting some decisions or setting out how they should make decisions.

LIFE SUSTAINING TREATMENT DECISIONS

If you wish to make a health and welfare LPA, you can give your attorney(s) authority to give or refuse consent to life sustaining treatment. If you have already made an advance decision to refuse medical treatment (sometimes called a 'Living Will'), you should bring this with you, as we will need to ensure that the outcome you want is achieved.

DO YOU WANT TO GIVE YOUR ATTORNEYS GUIDANCE?

It is helpful for your attorney(s) to be given guidance about your wishes, feelings, values and beliefs, and who you would like to be consulted about significant decisions, so they have confidence they are making decisions you would want to be made, if you were able.

- In a property and financial affairs LPA you might want to include details of people you want to provide for, or the manner in which your funds should be invested.
- In a health and welfare LPA you might want to say where you would like to live, if you can no longer safely remain in your own home, or the circumstances when your attorney(s) should refuse the continuation or giving of medical treatment.

DO YOU WANT YOUR ATTORNEYS TO BE PAID?

Generally, family and friends would not expect to be paid, although you may wish to allow them to be paid for providing care, or to be paid if the role would be significantly time consuming because of the complexity of your financial affairs.

If you choose professional attorneys, they must be paid for their work. The LPA will set out the basis of charges.

NOTIFYING PEOPLE OF THE REGISTRATION OF THE POWER

You can choose up to five people to be notified when the LPA is to be registered with the Office of the Public Guardian, who can raise concerns on your behalf. It is important that you think carefully as to the people you choose:

- The person should be someone with whom you are likely to have regular contact and who is interested in your best interests and well-being.
- You should tell them that you are naming them.
- You might also decide to require your attorney(s) to consult or provide ongoing information, such as financial statements to your chosen person.
- You will need to give us their name(s) and address(es).

WHO WILL BE THE CERTIFICATE PROVIDER?

Your LPA must also be signed by an independent person confirming in their opinion at the time you sign the LPA:

- That you understand the purpose of the LPA and the scope of the authority given;
- That no fraud or undue pressure is being used to induce you to make the LPA; and;
- That there is nothing else that would prevent your LPA from being created.

WHO CAN ACT AS CERTIFICATE PROVIDER?

You must choose a person to act as your certificate provider, who must be:

- Over 18 years of age;
- Someone whom you have known for at least two years; or
- Someone who, on account of their professional skills and expertise, considers themselves competent to make the judgments necessary to give the certificate, such as a lawyer or doctor.

They cannot be:

- A member of your family
- A family member of any of your attorneys
- Your business partner or paid employee
- Any attorney appointed by you under this document or another LPA or Enduring Power of Attorney (whether or not it has been revoked)
- The owner, manager or employee of a care home in which you are living, or their family member or partner
- A director or employee of a trust corporation appointed as your attorney

If we agree to act as an attorney, we cannot act in the role of certificate provider.

If we are not appointed as attorneys, we can act as your certificate provider.

INFORMATION WE WILL NEED

If you would like us to act for you in drafting your Lasting Power of Attorney, please contact us on 01634 854 381 or email info@hawklaw.co.uk to arrange an appointment, where you will need to bring the following:

- 2x forms of identification - one photographic such as your passport or drivers licence and one with your address on, such as a utility bill or bank statement dated within the last 3 months
- Names and addresses of your attorneys as well as their dates of birth
- Names and addresses of anyone who you would like to notify of the registration of the LPA
- Names and addresses of anyone you would like to financially provide for