

# **WHY SHOULD I MAKE A LASTING POWER OF ATTORNEY ?**

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## Why should I make a Lasting Power of Attorney ?

Actually, this question should be “Why should I make a Lasting Power of Attorney (Property & Financial Affairs) **and** a Lasting Power of Attorney (Health & Welfare)?”.

The answer is far more straightforward than the question:-

If you care enough about what happens to your assets after you die, you ought to care even more about keeping both **them** and **yourself** safe whilst you are alive.

In the above statement, looking after ‘**them**’ (your property and assets and associated affairs) is done by making a document called a *Lasting Power of Attorney – Property & Financial Affairs* (an ‘LPA-PA’).

And looking after ‘**yourself**’ (your personal welfare and healthcare) is done by making a document called a *Lasting Power of Attorney – Health & Welfare* (an ‘LPA-HW’).

We will deal with the LPA-PA first, and then the LPA-HW.

# Lasting Power of Attorney – Property & Financial Affairs ('LPA-PA')

An LPA-PA is a document that you sign to appoint somebody to act for you should you for any reason become unable to manage your own financial affairs.

If you care enough about what happens to your assets after you die, you ought to care even more about keeping them safe whilst you are alive.

*While a Will ensures that your estate is distributed according to your wishes when you die, an LPA-PA **protects** your assets by authorising somebody **chosen by you** to deal with your affairs on your behalf (should you become unable to manage them yourself) **whilst you are alive**.*

If you **do not** have an LPA-PA, then if for any reason you suddenly become unable to manage your own affairs, e.g.

- You suffer an accident and are confined to bed or hospital
- You suffer a more serious accident which permanently incapacitates you
- You become mentally incapacitated as a result of old age or for some other reason

... then the **only** way that your financial affairs can be managed is by an application (by a relative or other person close to you) to the Court of Protection. This can take up to 10 months and cost up to £1,000 to process – during which time your finances could be seriously damaged – and the person authorised to handle your affairs on your behalf is not only unlikely to be who you would have chosen, but may even be a Court Official – who can (and will) charge every time he/she acts for you.

If you have an LPA-PA, your chosen representatives can act for you straight away if you become unable to handle your own affairs or if you become mentally incapacitated.

Note that you must be mentally capable to make an LPA-PA. Therefore - just like a Will - **if you don't have one then by the time you really need one it's too late**.

## **How an LPA-PA works**

This is the normal process that you go through when you make an LPA-PA: -

1. You decide and specify under what circumstances the LPA-PA is to start – e.g. :-
  - EITHER straight away
  - OR if for any reason you cannot handle your own affairs
  - OR if you become mentally incapable
  - OR for some other specified reason
2. You create and print the LPA-PA, and sign it (or have it signed for you) in the presence of a witness.
3. You get your Attorney(s) and a 'Certificate Provider' (see next page) to sign it.
4. You or your Attorney(s) register the LPA-PA at the Office of the Public Guardian – who will stamp it on every page. This can be done at any time right up until the LPA-PA is needed.
5. You store it somewhere safe.
6. If the 'conditions' (if any) you specified in step 1 above come to pass, then the Attorney(s) you have appointed can act for you straight away: they take the LPA-PA document to your bank, etc. (plus any proof that the 'conditions' have been met) and use it as their 'authority to act'.
7. If you die, the LPA-PA ceases and your Will 'takes over'.

## **What you can do with an LPA-PA**

An LPA-PA is a bit like a normal Power of Attorney, except that it continues if you become mentally incapacitated (a Power of Attorney doesn't).

In particular, you can **specify** any or all of the following in an LPA-PA: -

- The identity of your **Attorney(s)** and, if you appoint more than one, whether they must act all together ('Together') or whether they can act separately ('Together and Independently') or a combination of the two.
- You can specify **replacement** Attorney(s), in case one or more of your original appointed Attorneys cannot or refuses to act – plus (if you want) conditions regarding who is to replace whom, etc.
- What **restrictions** are to be placed on your Attorney(s) (e.g. they may not act while you are able to conduct your own affairs, or they may not act unless you are mentally incapacitated, or they may not act without the written consent of a specified relative on specified matters, or they can only sign cheques for you, or they can only deal with matters of less than a specified amount of money – e.g. £1,000, or they may deal only with your financial affairs and not your property, or they may deal only with certain specified properties of yours, or they may deal only with certain bank accounts, etc.)
- You can offer your Attorney(s) **guidance** on how they are to act (which they are not legally obliged to follow but will still give them an idea of how to act for you).
- You can specify what **fees** (if any) your Attorney(s) may be paid from your estate (note that by law they are allowed to claim expenses).
- As an important **safeguard** you can specify people who must be **told** if and when an application to register the LPA-PA is made. If they think that something is wrong, these people can then object to the registration of the LPA-PA (i.e. they can stop it from being used).
- As another **safeguard**, a '**Certificate Provider**' must also sign the LPA-PA to confirm that you were mentally capable when you made it and that you have not been pressurised into making it. Such a person could be your doctor, or somebody who's known you for at least the past 2 years (more details are provided in the Instructions document that you get in your LPA-PA package). Note that if you take up the **first** safeguard mentioned above (people to be told) then **one** 'Certificate Provider' is required. If you don't, then **two** 'Certificate Providers' are required.

You will see that the scope for both what you can do and the protection that you can add into the LPA-PA is pretty wide! It's certainly more flexible and less open to abuse than the old 'Enduring Power of Attorney' that it replaced on October 1<sup>st</sup> 2007. To make things a little easier, we have incorporated some 'standard scenarios' into our online LPA-PA drafting software so that all you have to do is 'tick a box' to create your LPA-PA. This takes all of the pain out of the creation of what can be quite a sophisticated document.

Once you have made (and signed/witnessed) your LPA-PA, and it has been registered at the Office of the Public Guardian (we give you instructions on how to do this), should it become necessary your Attorney(s) can start to act straight away unless you have placed a **restriction** specifying otherwise (note that we recommend the restriction which makes the LPA-PA only valid if you are unable to conduct your own affairs).

Finally, please note that, just like a Will, an LPA-PA created using our site is valid for immovable assets (i.e. property) in England and Wales only and movable assets (e.g. bank accounts) in some other countries. We recommend that if you have immovable assets outside England and Wales you should make the equivalent of an LPA-PA in the country(s) concerned in addition to the one you make using our site.

## **How to make an LPA-PA**

If you've already made a Will at our site, login and select the 'Make a Lasting Power of Attorney' option. If you **haven't** already made a Will at our site, you have 2 options: -

- (A) If you want to draft/make a **Will and an LPA-PA**, click on 'Write Your Will Now' or 'CLICK HERE TO TRY OUR SERVICE WITHOUT OBLIGATION'.
- (B) If you want to draft/make **just an LPA-PA**, click on 'Make an LPA Only'.

Once you are signed in and/or have selected a drafting option, all you have to do is: -

1. Complete the short questionnaire, view your document summary, pay, download and print.
2. Sign your LPA-PA in the presence of at least 1 witness (who cannot be your Attorney).
3. Get your Attorney(s) to sign where indicated on the LPA-PA to accept their responsibilities (again in the presence of a witness).
4. Get your certificate provider(s) to complete and sign where indicated.
5. Register the LPA-PA at the Office of the Public Guardian (Note: this involves paying them a fee which at the time of writing is £120 per LPA).

That's all there is to it. Just like a Will, you don't need a Solicitor at any stage – and **we give you personalised and comprehensive instructions** for every step.

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

Everybody who makes a 'Lasting Power of Attorney - Property & Financial Affairs' ('LPA-PA') should also make a Lasting Power of Attorney - Health & Welfare ('LPA-HW') for one simple reason :-

*If you care enough about having your **property** and associated affairs looked after by somebody you have appointed in the event of you being able to do so yourself (LPA-PA), then you ought to care **even more about you and your personal welfare and healthcare** being properly looked after by **somebody you have appointed** if, again, you are unable to look after things yourself.*

An LPA-HW allows you to appoint one or more Attorneys to make decisions on your behalf about your personal welfare and healthcare, including whether to give or refuse consent to medical treatment on your behalf and deciding where you live.

These decisions can only be taken on your behalf when you lack the capacity to make them yourself, for example if you are ill, unconscious or because of the onset of a condition such as dementia.

The consequences of not having an LPA-HW are similar to those of not having an (LPA-PA). If for any reason you suddenly become unable to make your own decisions, e.g.

- You suffer an accident and are confined to bed or hospital
- You suffer a more serious accident which permanently incapacitates you
- You become mentally incapacitated as a result of old age or for some other reason

... then an application has to be made (by a relative or other person close to you) to the Court of Protection. This can take up to 10 months and cost up to £1,000 (or even more) to process - during which time no important decisions regarding your healthcare could be made other than by a doctor treating you - and the person eventually appointed to make decisions on your behalf is not only unlikely to be who you would have chosen, but may even be a Court Official - who can (and will) charge every time he/she acts for you.

However, if you do have an LPA-HW, your chosen representatives can make decisions for you straight away if you become unable to make them yourself.

Note that you must be mentally capable to make an LPA-HW. Therefore - just like a Will and an (LPA-PA) - **if you don't have one then by the time you really need one it's too late.**

### ***What your Attorneys can do***

What your Attorney(s) can do will depend on the powers that you give them when making your LPA-HW.

If you include no restrictions in your LPA-HW, then your Attorney(s) will be able to make any decisions regarding your personal welfare that you would have been able to make, such as :-

- giving or refusing consent to particular types of health care, including medical treatment decisions
- you staying in your own home, perhaps with help and support from social services
- you moving into residential housing and choosing the right care home for you
- more day-to-day issues, for example about your diet, your dress or your daily routine

However, they cannot just do whatever they like. They will only be able to make decisions that are in your best interests and they will only be able to make them if they are able to establish that you are unable to make them yourself. They must follow the principles of the *Mental Capacity Act 2005 Code of Practice* (this document is available at our website under 'FREE Documents') at all times when acting.

You can also specify yourself what your Attorney(s) can do. All you have to do is specify 'restrictions and/or conditions' when creating the LPA-HW - for example, you may include a restriction that your Attorney(s) cannot make decisions about the treatment of a particular illness you may have.

Additionally, you are able to specify in your LPA-HW whether or not your Attorney(s) are permitted to give or refuse consent to life-sustaining treatment on your behalf. There is a special section for this in the LPA-HW document, which you sign separately when signing the LPA-HW.

### ***The safeguards built into an LPA-HW***

When choosing an Attorney, it is important that you are confident that they know what you want and that you are comfortable that they will be making decisions on your behalf. However, there are safeguards to protect you. Safeguards already built in to an LPA-HW include :-

- you are assumed to have the capacity to make your own decisions (i.e. the LPA-HW cannot be used) unless it is established that you lack capacity.
- the requirement that the LPA-HW must be registered with the Office of the Public Guardian before use.
- the requirement to identify someone to provide a Part B Certificate confirming, amongst other things, that you understand the purpose of an LPA-HW and the scope of powers you are giving to your Attorney(s).
- that certain persons chosen by you called 'people to be told' are notified before registration of the LPA-HW.
- the requirement for the signatures of you and your Attorney(s) to be witnessed.
- the right of specific people (you, the Attorney(s) and named persons) to object to registration of the LPA-HW.
- your Attorney(s) must have regard to the Code of Practice which provides guidance on the Mental Capacity Act 2005 (This document is available at our website under 'FREE Documents'). The Code makes it clear that Attorneys must always act in your best interests.

### ***If you already have a 'Living Will'***

If you made an 'Advance Decision' (sometimes known as a 'living will') before 1st October 2007 then it may still be valid. However, you should check that it meets the new rules (i.e. the Mental Capacity Act 2005) - particularly if it deals with life-sustaining treatment. More detailed guidance on this is available at [www.dh.gov.uk/consent](http://www.dh.gov.uk/consent).

It is highly likely that the best thing for you to do is make an LPA-HW and then, if you are satisfied that it meets all of your requirements, destroy all copies of your old 'Advance Decision'.

## **How to make an LPA-HW**

If you've already made a Will at our site, login and select the 'Make a Lasting Power of Attorney' option. If you **haven't** already made a Will at our site, you have 2 options: -

- (A) If you want to draft/make a **Will and an LPA-HW**, click on 'Write Your Will Now' or 'CLICK HERE TO TRY OUR SERVICE WITHOUT OBLIGATION'.
- (B) If you want to draft/make **just an LPA-HW**, click on 'Make an LPA Only'.

Once you are signed in and/or have selected a drafting option, all you have to do is: -

1. Complete the section for an LPA-PA as and when it is offered. Don't worry – firstly the information you're entering is copied to your LPA-HW (you can later edit it) to save time, and secondly you get the option to only purchase the LPA-HW if that's all you require.
2. When you get to the question asking if you also want to draft an LPA-HW, answer 'yes'.
3. Complete the short questionnaire, view your document summary, pay, download and print.
4. Sign your LPA-HW in the presence of at least 1 witness (who cannot be your Attorney).
5. Get your Attorney(s) to sign where indicated on the LPA-HW to accept their responsibilities (again in the presence of a witness).
6. Get your certificate provider(s) to complete and sign where indicated.
7. Register the LPA-HW at the Office of the Public Guardian (Note: this involves paying them a fee which at the time of writing is £120 per LPA).

That's all there is to it. Just like a Will and an LPA-PA, you don't need a Solicitor at any stage – and **we give you personalised and comprehensive instructions** for every step.