

A Guide to Lasting Power of Attorney



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A Lasting Power Of Attorney is a legal document, which allows you (the donor) to give power to someone of your choosing (the attorney), that you trust to make decisions on your behalf should you lack the capacity to do so yourself.

These decisions can affect your personal welfare, healthcare, finances and where you live.

Since 1 October 2007 a new type of power of attorney has been available in England and Wales called a Lasting Power of Attorney (LPA). The LPA was created under the Mental Capacity Act 2005, and like the previous legal document - Enduring Power of Attorney (EPA) - the LPA remains effective after the donor loses mental capacity.

However, unlike the EPA, the LPA can also give authority to deal with the donor's personal welfare. Special wording can be included in a personal welfare LPA to make decisions about 'life-sustaining treatment' (i.e. treatment needed to keep the donor alive) for example force feeding or organ transplant.

What if I already have an Enduring Power of Attorney?

- EPAs granted before 1 October 2007 can remain valid until the donor dies
- No new EPA will be granted after 30 September 2007
- It is not possible to change an existing EPA into a LPA; instead a new separate LPA will have to be drawn up and the EPA revoked

Previously under the Enduring Power of Attorney regime, if a person lost the capacity to make their own decisions, and they **didn't** have an EPA, they or their family could apply to the Court of Protection for a Receiver to be appointed, this would ordinarily be a member of their family or a close and trusted friend.

Under the new regime, if no EPA or LPA exists, a system of court appointed Deputies replaces the previous system of Receivership. However, Deputies will only be appointed if the court cannot make a one off decision concerning that individual.

Under new LPA rules (but subject to any restrictions in the actual power) the chosen attorney can deal with property and financial affairs. If capable, the donor may also continue making decisions, along with the attorney. In addition the attorney can deal with personal welfare but only if the donor is incapable of making a decision at the time.

Separate LPAs are therefore required for property and financial affairs and personal welfare. Without an LPA a family would have to apply on an ongoing basis to the court for decisions to be made and each time a separate fee would apply!

Where your affairs are more complex such as owning a business or running an investment portfolio, a Deputy may be appointed by the court on a one off basis to look after these areas short term. Deputies will not be family members so this could result in your affairs being looked after by a third party.

What are the 2 types of LPA and what can the attorney do?

- 1) Personal Welfare** - deciding on where an individual's permanent place of residence should be, what care and accommodation may be appropriate, consenting to any medical treatment, making decisions on dress, diet and personal appearance, choosing social activities and holidays, arranging work, education or training.

- 2) Property and Affairs** - duties could include opening, closing and operating bank accounts, collecting pensions and benefits, completing tax returns, paying household expenses, buying, leasing or selling property, medical or residential care costs and making gifts.

An attorney cannot act until the LPA is registered. Once registered it carries on until revoked. Authority under a personal welfare LPA is restricted. The individual can add conditions to the LPA that may affect the extent to which the attorney can act in some instances.

The form is prescribed and includes a certificate, from a prescribed person, that the donor understands the effect of the power and the scope of the authority it confers. Nominated persons are then notified when the power is registered. Honister Capital will be able to help you with further information on how to set up a Lasting Power of Attorney.

Please note: It is worth mentioning that the donor, provided they are mentally capable, can revoke an LPA at any time. Unless the power states to the contrary, it will be revoked if the relationship of the attorney to the donor is spouse or registered civil partner, and the marriage or civil partnership is annulled or dissolved.

For further information or to book an initial consultation, please call us free on 020 8760 9940.

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