

Lasting Power of Attorney Frequently Asked Questions

What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document in which you (the Donor) nominate a person or persons (the attorney) to be authorised to make decisions on your behalf in two distinct situations.

Are there different types of Lasting Powers of Attorney?

There are two types of Lasting Power of Attorney - a Lasting Power of Attorney in relation to your property and financial affairs (e.g. Bank accounts, stocks and shares, house, benefits etc.) and a Lasting Power of Attorney in relation to your health and welfare (e.g. making medical/welfare decisions).

Can I have both a Property and Affairs LPA and Health and Welfare LPA and would my Attorneys have to be the same?

You can have one or both types of LPA. They are independent of each other and so you could appoint different Attorneys if you wished.

Who can be an Attorney?

Anyone over the age of 18 can be an Attorney. It is usual for Donors to appoint close family members as their Attorneys. However, Donors also frequently choose to appoint others such as friends or their solicitors either jointly with family members, on their own, or as replacements.

When can an Attorney act?

An Attorney only has authority to act when the Lasting Power of Attorney is registered at the Office of the Public Guardian. An Attorney under a Health and Welfare power can only make decisions when the Donor is unable to do so because they are no longer capable.

How many Attorneys can I have?

There is no limit on the number of Attorneys you can have. The number of Attorneys you would be advised to have would depend on your individual circumstances. For some people, having one Attorney may be sufficient, but for others it may be the case that three or four Attorneys may be more suitable. It is rare for people to need more than four Attorneys and the most usual number is two.



How must my Attorneys act for me?

- Your Attorneys must assume that you can make your own decisions unless they have established that you cannot.
- They must help you to make as many decisions for yourself as they can.
- They cannot treat you as unable to make the decision in question unless all practicable steps to help you to do so have been made without success.
- They must not treat you as unable to make a decision simply because you make an unwise decision.
- They must act in your best interests at all times when you are unable to make decisions for yourself.
- Before your Attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Can I restrict my Attorneys' powers?

It is possible within the Lasting Power of Attorney document to place restrictions on how your Attorneys act for you. For example, you may wish not to give your Attorney authority over some of your assets. However, this is uncommon because, as your Attorney should be someone you trust wholeheartedly, to impose restrictions in the majority of cases would seem unnecessary.

Can I specify guidance for how I want my Attorneys to act for me?

The Lasting Power of Attorney allows you to set out guidance for your Attorneys. This is optional and is not binding but, if there are potentially difficult decisions, it may be helpful to your Attorneys to know your preferences in advance.

Can my Attorneys make gifts on my behalf?

In general, Attorneys are not permitted to make gifts without the approval of the Court of Protection. This is the case even if the Attorneys wish to benefit the Donor by making the gift (e.g. reducing the Donor's estate for inheritance tax purposes). There is limited authority for Attorneys to make gifts to charities and gifts to family members of a seasonal nature, or made on the occasion of a birth or marriage/civil partnership, or on the anniversary of a birth or marriage/civil partnership. If an Attorney is considering making a gift, they should first seek appropriate legal advice.

Can my Attorneys put me into a Nursing Home?

Attorneys under a Health and Welfare Lasting Power of Attorney can decide to place you into residential accommodation providing, in all the circumstances, they are satisfied that it would be in your best interests. Attorneys under a property and financial affairs Lasting Power of Attorney cannot, although they do have the power to use your funds to fund any care, whether this is administered at your home or in a care home.

Can my Attorneys sell my house?

Attorneys can only sell your house if you own the property in your sole name. If you own the property jointly then they would have to liaise with the other owners. If the Attorney is also the co-owner (e.g. a husband appointing his wife as his attorney) then the Attorney alone could not sell the house and a trustee would need to be appointed (at which point you should obtain appropriate legal advice).

When do Attorneys become unable to act?

Attorneys' powers cease on their bankruptcy, incapacity and obviously their death. Their powers also cease on the death of the Donor. Attorneys do not have authority to administer the estate of a Donor who has died.

Do I need a replacement Attorney?

Replacement Attorneys may be beneficial to you as they offer the chance of succession if your original Attorneys die before you or become unable to perform their duties. Certainly, if only one original Attorney is to be appointed, having a replacement would be advisable. It is not mandatory for you to have a replacement Attorney should you not wish to do so.

When can I register my Lasting Power of Attorney?

You can register your Lasting Power of Attorney as soon as it is properly executed. There can be a significant time delay between sending off the documents to be registered and receiving the registered Lasting Power of Attorney. Accordingly, we advise clients to register the Lasting Power of Attorney before it is needed so as to avoid any inconvenience later – for example if a Donor suffers a stroke and loses capacity 'overnight', it may be necessary for the Attorneys to act immediately to manage the Donor's finances, but if the power has not been registered they will be forced to wait before they can do anything.

How long does it take to register a Lasting Power of Attorney?

Our experience is that you should expect to be waiting for a period of up to twelve weeks.

Do I need to notify anyone that my Lasting Power of Attorney is to be registered?

There is no obligation on you to notify anyone. This is a safeguarding measure and allows the notified person to get involved if they are suspicious of what is happening. If however there is nothing untoward, the notified person need do no more than simply read the notice.

Who can be the notified party?

Anyone other than an Attorney or replacement Attorney. It is often a relative or a friend, but it could, for example, be your solicitor, doctor, financial adviser etc. You can choose more than one party to be notified if you wish.

Who and what is a Certificate Provider?

A certificate provider is a person who certifies that you have the sufficient mental capacity to make the Lasting Power of Attorney and that you are not being unduly influenced by a third party to make it. It can be a professional who has the relevant expertise to make the assessment (i.e. a Doctor or Solicitor) or someone who has known you for more than two years. If anyone were to challenge your Lasting Power of Attorney on the basis that they thought you did not have the mental capacity to make one or that you were making it under duress, your certificate provider would have to show why they thought differently.

Who can be a witness to my signature?

Anyone over 18 who is not a specified Attorney or replacement Attorney. They must also not be an employee of any Attorney or replacement Attorney.

What happens if I have no Lasting Power of Attorney and I lose capacity to manage my affairs?

The only way a person can be legally appointed to manage your affairs would be through a Deputyship Order at the Court of Protection.

Why Use Linder Myers

We have a large team of dedicated lawyers specialising in the preparation of LPAs.

A number of our lawyers are members of the Solicitors for the Elderly (SFE).

We are committed to delivering the very best possible service at a competitive price. We work closely with clients to take the strain out of the legal process. Distance is not an issue as we provide:-

- A postal service or email service using simple forms which are completed in the comfort of your home. Once received, one of our lawyers will make a telephone call to verify certain details.
- Telephone service - at a time suitable to the client one of our lawyers will go through a range of questions and take instructions over the phone.
- Skype and Face Time – as with the telephone service but using this technology to enable face to face discussion.
- Office appointments - clients visit a lawyer in one of our offices.
- We can arrange a home visit and if this is necessary we will discuss the costs associated with this prior to the visit.

Contact Linder Myers – place your trust in a specialist lawyer.



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