

Lasting Powers of Attorney

A power of attorney is a legal document enabling you to give people you trust (your attorneys) authority to make certain decisions on your behalf. Unlike ordinary powers of attorney, a Lasting Power of Attorney (LPA) continues to operate if you lose the capacity to manage your own affairs. This is a powerful and valuable document and should be entered into with care.

Why make an LPA?

The potential for loss of mental capacity is not limited to later life and as such this is something that everyone should put in place. The key benefit of an LPA is enabling people you trust to take action on your behalf when you are unable to (whether that's because you're out of the country or worse).

If LPAs are prepared much earlier in life they will give the same protection in the event of incapacity as the result of illness or accident. Making an LPA now does not mean that you give up any of your own rights, just that you have an arrangement in place enabling your chosen Attorney to take responsibility for some or all of your affairs if you need them to.

Types of LPAs:

LPAs come in two forms:

- A property and affairs LPA: enabling your attorney to deal with your property and finances
- A welfare LPA: authorises your attorney to make welfare and healthcare decisions on your behalf, but only when you lack mental capacity to do so yourself. This also extends, if you wish, to giving or refusing consent for the continuation of life sustaining treatment

Your Attorney

You should take care over who you appoint. They should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can require them to always act together (jointly), or together or separately (jointly and severally). You may even appoint them to act jointly for some things, and jointly and severally for others. This should only be considered after taking advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorneys, in case they die or otherwise cannot act for you.

When can the Attorney act?

Your attorney can only act when:

- your LPA has been signed by you and your attorney(s); and
- it has been certified by an independent person (the certificate provider) that you: understand the nature and scope of the LPA; have not been unduly pressured into making the power; and that there has not been any fraud or another reason why you cannot make the power; and
- it has been registered with the Office of Public Guardian.

The financial LPA can be used both when you have capacity to act and if you lack capacity to make a financial decision. The welfare power can only be used if you lack mental capacity to make a welfare or medical decision. Following the Mental Capacity Act 2005, capacity is assessed on a decision by decision basis.

What happens if you have not signed a power of attorney?

If you lack capacity to make a financial decision, and do not have an LPA in place, an application may be needed to the Court of Protection to appoint someone to make decisions on your behalf. This is both costly and time consuming and is best avoided. Most care and treatment decisions can be made on your behalf without the need for a court application. However, preparing a welfare LPA can avoid potential disputes.

Preparing an LPA

It is worth planning ahead. When someone becomes incapable of managing their affairs it can be a very difficult time for all concerned. At least with an LPA in place, some of the day to day issues can be dealt with more easily.

We are experienced in advising on the preparation and use of LPAs and guide attorneys when carrying out their duties.

Let us help you prepare your LPA and guide you through the process of signing and registering it - please contact us on 01227 700 702 or by email: info@argolifeandlegacy.co.uk

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.