



Lasting Power of Attorney

A lasting power of attorney (LPA) gives someone else the power to make certain decisions on your behalf, typically if you are no longer able to do so.

Drawing up a lasting power of attorney gives you the opportunity to decide who you would like to do this for you and include any particular wishes you have or restrictions on your attorney's powers should you want to.

If you are asked to act as an attorney, you should think carefully about whether you will be prepared to take on the role. Once you do, it's essential to ensure that you fulfil your responsibilities.

Drawing up a lasting power of attorney

Drawing up a lasting power of attorney is a sensible way to plan for an uncertain future. Many people choose to do this at the same time as drawing up a will. While LPAs are most often used to deal with the affairs of the elderly, if they are prepared much earlier in life they will give the same protection in the event of incapacity as a result of illness or accident.

You can choose to draw up a property and financial affairs LPA (allowing your attorney to make financial decisions for you), a health and welfare LPA, or both. In each case, you have the freedom to choose the attorneys you want (provided they agree to act) and to limit what they can do.

With a property and financial affairs lasting power of attorney, you can decide whether it should be useable now (for example, if you want someone to take care of financial affairs while you travel) or only in certain circumstances (eg: if you become incapable).

A health and welfare LPA can only be used to take decisions for which you lack the mental capacity, such as care decisions and decisions about how you are treated medically including life sustaining treatment.

Obviously, the choice of your attorney(s) is critical. Willingness, competence and trustworthiness are essential.



Acting under a lasting power of attorney

A lasting power of attorney must be registered with the Office of the Public Guardian before you can act.

You and the donor of the power of attorney (the person who grants the LPA) should discuss when to do this. Once the LPA has been registered, you can take decisions on the donor's behalf provided they are within the restrictions of the LPA.

You must act in the donor's best interests and take reasonable care. If necessary, you should consider taking professional advice: for example, to help with investment decisions or identify the most appropriate form of care.

Deputyship

If someone becomes incapable without having drawn up a lasting power of attorney (or its earlier version, an enduring power of attorney), it may become necessary to start taking decisions on their behalf. For example, you might wish to do this if a parent starts suffering from dementia.

You can apply to the Court of Protection for a deputyship. Once granted, the deputyship gives the deputy agreed powers to make decisions. The powers will typically be similar to those that would have been granted by an LPA.

However, applying for a deputyship can be more costly than having an LPA put in place and can be time consuming and stressful for family members.

Clearly, drawing up a lasting power of attorney in advance is a preferable solution, as it gives the donor the opportunity to express their own wishes but if a power of attorney does not exist, a deputyship may well be the best way to ensure that a loved one's health, welfare and financial affairs are being properly looked after.

More information

If you would like more information about LPAs please contact the Inheritance Protection Team, who will be happy to help with any questions you may have.

Newbury Office

White Hart House
Market Place
Newbury
Berkshire
RG14 5BA

Maidenhead Office

First Floor
7 Frascati Way
Maidenhead
Berkshire
SL6 4UY

Thatcham Office

Winbolt House
The Broadway
Thatcham
Berkshire
RG19 3HX

T : 01635 508080
F : 01635 521341
gardner-leader.co.uk