

BERRYS SOLICITORS

Lasting Powers of Attorney

**Help with making decisions about
your health, welfare or finances**



Powers of Attorney

There are two types of Power of Attorney: Ordinary and Lasting.

If you want to give someone the authority to make decisions and take action about your finances while you still have mental capacity, you can set up an Ordinary Power of Attorney. This gives someone else authority to act on your behalf. It is only valid while you (the 'donor') remain mentally capable of making your own decisions about your finances, so you can keep an eye on what the person making decisions for you (your attorney) is doing. You can limit the power you give to your attorney so that they can only deal with certain assets, for example, your bank account but not your home.

You may find an attorney useful if, for example, you're going into hospital and want someone to deal with your bank account while you're there.

Lasting Power of Attorney (LPA), which would continue to be valid if you lost mental capacity and were no longer able to make your own decisions.

What is mental capacity?

Having mental capacity means a person is able to make their own decisions. If you're unable to make your own decisions at some point in the future – such as if you have advanced dementia or are unconscious – someone else will need to do so for you. These could be decisions about your property and financial affairs, such as paying your mortgage, investing your savings or buying items you need, or decisions about your personal welfare, such as what you should eat, or what type of medical treatment you should receive.

Some people will be able to make decisions about some things but not others, or their ability to make decisions may change from day to day. Taking time to understand or communicate may be mistaken for a lack of mental capacity but having dementia, for example, doesn't necessarily mean someone can't make any decisions themselves. If someone else having difficulty communicating what they want, an attempt should always be made to overcome those difficulties and help the person decide for themselves.

Before someone can make a decision for you, they must have reasonable belief that you cannot make that particular decision yourself. The words 'reasonable belief' are important because your mental capacity can change over time. The person making a decision for you must make sure they are acting in your best interests.

Lasting Powers of Attorney (LPA)

A Lasting Power of Attorney (LPA) is a way of giving someone you trust the legal authority to make decisions on your behalf, if either you're unable to at some time in the future or you no longer wish to make decisions for yourself. This person is known as your attorney.

There are two types of LPA.

Property and Financial Affairs LPA

Your attorney can use this while you still have mental capacity. They can generally make decisions on things such as:

- selling your home
- paying the mortgage
- investing money

- paying bills
- arranging repairs to property.

Health & Care LPA

Your attorney can only use this when you no longer have mental capacity. It covers healthcare as well as personal welfare. An attorney can generally make decisions about things such as:

- where you should live
- your medical care
- what you should eat
- who you should have contact with
- what kind of social activities you should take part in.

You can restrict the type of decisions your attorney can make, or let them make all decisions on your behalf. If you're setting up a Property & Financial Affairs LPA, your attorney must keep accounts and make sure their money is kept separate from yours. You can ask for regular details of how much is spent and how much money you have. This offers you an extra layer of protection. You can also request that, if you lose mental capacity, these details are sent to your solicitor or a family member.

If you're married or in a civil partnership, you may have assumed your spouse would automatically be able to deal with your bank accounts and pensions etc, if you lost mental capacity. This is not the case: without a Property & Financial Affairs LPA, they won't have the authority. Similarly, if you don't have a Health & Care LPA, any decisions about your healthcare would be made by doctors. They would consult with your family, but maybe not the person you'd want to make these decisions.

Lasting Powers of Attorney were introduced in October 2007, replacing the old system of Enduring Powers of Attorney (EPA). An EPA created before October 2007 remains valid.

When is an LPA valid?

An LPA will only be valid if you have the mental capacity to set it up and haven't been put under any pressure to create it. It must be your decision and you must be able to trust your attorney, as you are giving them extensive power to make decisions about your life.

The LPA must be signed by a certificate provider who confirms that you understand it and haven't been out under any pressure to sign it. They must be someone you know well or a professional person such as a doctor, social worker or solicitor. The LPA must be registered with the Office of the Public Guardian before it can be used.

Setting up an LPA

To register your LPA, first get the LPA forms and an information pack from the Office of the Public Guardian or download the forms or fill them out online. You don't need a lawyer to help you set up an LPA but, if you prefer, a solicitor or local advice agency can help you set up and register it.

There is a fee to register your LPA which the Office of the Public Guardian can tell you about. If you have a low income, you may be eligible for a 50 per cent discount, and if you're receiving certain benefits you won't have to pay anything at all. You must register the LPA while you have the mental capacity to do so. It can't be used during the registration process which takes around nine weeks. Contact the Office of the Public Guardian if you need to find out if your LPA has been registered.

If you lose mental capacity but you signed the LPA while you still had mental capacity, the attorney can register it for you. You can ask a solicitor to help you get a certified copy of your LPA. Contact the Office of the Public Guardian for details and costs.

Choosing an attorney

Remember, the role of attorney involves a great deal of power and responsibility so it's important that you trust the person you choose. You can choose more than one attorney if you want. Think carefully about who you believe would be able to carry out the role and make decisions in your best interests. Give the person you ask time to think about the role, so they can make sure they are making the right decision. Your attorney could be a family member, a friend, your spouse, partner or civil partner. Alternatively, they could be a professional, such as a solicitor.

Your attorney can claim back any expenses they incur as a result of their role as your attorney – postage, travel costs or photocopying costs, for example. They can claim these from your money, keeping an account of any expenses and relevant receipts.

However, they can't claim for time spent carrying out their duties (this would only be the case if you appoint a professional attorney, such as a solicitor).

An attorney must be over 18 and shouldn't be a paid care worker, except in exceptional circumstances.

Our Charges:

In respect of a simple and straight forward case our charges for preparation will be £345.00 plus vat for a Lasting Power of Attorney Property & Financial Affairs or Lasting Power of Attorney Health & Care.

If you are simultaneously having prepared a simple Property & Finance Affairs Lasting Power of Attorney and a simple Health & Care Lasting Power of Attorney then the combined fee will be £500.00 plus vat.

We would strongly recommend you proceed to have same registered. The Court fee is £ 82.00 per Lasting Power of Attorney (subject to Benefits you may be able to reclaim such fee) and our charges for dealing with Registration of a Lasting Power of Attorney namely attending serving of notices and dealing with the Office of the Public Guardian will be £90.00 plus vat per Lasting Power of Attorney.

What should I do now?

For more information please call us on 01253620022 or email us at berrys.mail@btconnect.com or visit our website <http://www.berrys-solicitors.co.uk/our-services/lasting-powers-of-attorney-property-financial-affairs-health-care/>.

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Berrys Solicitors is Authorised and Regulated by the Solicitors Regulation Authority

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