

Lasting Power of Attorney – Property and Affairs

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document that you (the “Donor”) make using a special form which we will prepare for you. It allows you to choose someone (the “Attorney”) you trust to make decisions about things such as your finances and property on your behalf either immediately or at a time in the future when you are no longer able to or you may lack the mental capacity to make those decisions for yourself.

An LPA can be prepared at any time but it can only be used once it has been registered with the Office of the Public Guardian (OPG).

There are two types of Lasting Power of Attorney; Property and Affairs which this information sheet is concerned with and Personal Welfare (such as medical treatment). If you would like information about a Personal Welfare LPA, please contact us.

What can my chosen Attorney(s) do?

A Property and Affairs Attorney, using a registered LPA, will be able to make exactly the same kind of decisions you can make now about your money and property. The person will only be able to make decisions within the scope of the powers you have given them and these powers might include:

- buying or selling any property (land, buildings or other assets) you own;
- opening closing or operating any bank, building society or other account containing your funds;
- claiming, receiving and using all benefits, pensions and allowances on your behalf.

It is important to stress that your Attorney(s) can only ever act in your best interests and there are safeguards in place to protect you as the Donor.

What are the safeguards?

The LPA is a very powerful legal document and so all parties concerned have to be sure that you are acting entirely independently and not being pressured into making the LPA. The safeguards include: the requirement that the LPA must be registered with the OPG before use; the requirement to identify someone to provide a certificate confirming, amongst other things, that you understand the purpose of an LPA and the scope of the powers that you are giving to your Attorneys and that certain persons chosen by you called “named persons” are notified before the registration of the LPA if you want them to be and these people can object to the registration.

Who can I choose to be my Attorney(s)?

Once your LPA is registered, your Attorney (along with yourself if you have the necessary capacity) will be in control of your finances and will have the power to sell your property. Therefore, it is important that you choose someone that knows you well; someone that you trust; and someone who would be happy to take on the role for you. You can choose and appoint a family member, friend or anyone over 18 who is willing to act for you. Your chosen Attorney cannot be bankrupt at the time when they sign the LPA form and the LPA may be cancelled if your attorney becomes bankrupt in the future.

If you appoint more than one Attorney, there are three ways in which they can act; together (i.e. all of the Attorneys have to be in agreement with every decision made, if one disagrees then the proposed action cannot go ahead); together and independently (Attorneys can act on their own and together) and together in some matters and independently in others (i.e. you

may want the agreement of all Attorneys if your house were to be sold but you may want them to act independently when paying nursing home fees.)

A replacement Attorney can be appointed if for some reason your appointed Attorney can no longer act on your behalf.

Who can I choose to be a “named person”?

Notifying named persons that the registration of your LPA is to take place is one of the safeguards put in place by the OPG. It allows these people raise concerns about the registration if, for example, they felt that you were being pressured into it. You can select up to five people that you want to be notified but you do not have to name anyone if you would prefer not to (the procedure is slightly different in this instance).

What is a Certificate Provider?

A Certificate Provider is someone who completes a section of the LPA form to confirm that understand the LPA and you are not under any pressure to sign it. As part of the LPA preparation package provided by Larcomes LLP, we would be happy to act as your Certificate Provider. If you include named persons on your LPA form then you only need one Certificate Provider. If you do not want anyone to be notified then you will need two Certificate Providers, which again we would be happy to provide you with.

What will happen once I return the LPA Questionnaire to you?

The first stage is that the LPA document will be drafted and a member of our team will contact you to arrange an appointment to discuss and sign the document. In order to act as your Certificate Provider, we will need to speak to you as the Donor alone so that we can be satisfied that you are aware of the implications of the document and that you are not under any pressure to sign it. Once we are happy with this, we will ask you to sign the document and we will also sign. We will then ask your Attorney(s) to sign the document, either in person or by post.

Once the document is signed, it can either be stored safely in our strong room until such time as you wish to register it. Or you may be in a position where you feel you would like your Attorneys to be able to act straight away, in which case the form will immediately be sent to the Office of the Public Guardian for registration.

How much will it cost?

The fee to register a Lasting Power of Attorney with the Office of the Public Guardian is £150.00 (reducing to £120.00 after April 1st 2009). The fee for our professional services to prepare the document are around £300 to £500 plus VAT but this may vary depending on the complexity of the document e.g. number of Attorneys and the number of named persons and whether you will require a home visit.