

Lasting Powers of Attorney: frequently asked questions

Below are some frequently asked questions (FAQs) about making a Lasting Power of Attorney (LPA). Although these FAQs highlight some key issues relating to LPAs, they are not comprehensive and the answers should not be treated as a substitute for seeking professional advice on a specific issue.

Q: I have heard that I can make an LPA but I do not know what this means. Is it the same as a Will?

A: No. An LPA is a legal document whereby you formally authorise one or more individuals (called attorneys) to make decisions and manage your affairs when you are not able to do so yourself.

Q: I have an Enduring Power of Attorney (EPA), but I have heard these are no longer valid. Is this correct?

A: The Mental Capacity Act 2005 came into force on 1 October 2007, introducing the LPA. Any valid EPA made before 1 October 2007 remains so but it is no longer possible to make a new EPA. Instead you will need to make an LPA.

Q: So what does an LPA cover?

A: There are two types of LPA. Property and financial affairs LPAs deal with financial matters and replace EPAs. Health and welfare LPAs cover health and personal care issues such as where the donor (the person making the LPA) should live, arrangements for day-to-day care and consenting to or refusing medical treatment.

Q: My wife and I made EPAs appointing each other as sole attorney. She is sadly now losing mental capacity. Do I need to take any action?

A: You have a duty as your wife's attorney to register her EPA with the Court of Protection. We can help you with the registration and the formalities to which you will need to adhere. You should also make an LPA to ensure you are not left without an attorney to help you, as your wife will no longer be able to act under your EPA.

Q: I have an EPA, so does this mean I do not need to make an LPA?

A: The Office of the Public Guardian (OPG) issued some guidance to the effect that attorneys do not have authority to instruct discretionary investment managers unless there is specific wording to that effect in the Power of Attorney. This potential problem could be solved by revoking your Enduring Power of Attorney and signing a Lasting Power of Attorney for Property and Financial Affairs, which could include a power for the attorneys to appoint discretionary investment managers.

You may also want to think about making a health and welfare LPA. This would complement an existing EPA and mean that your attorneys could assist with health and welfare decisions and not just with financial ones.

Q: I have an EPA but have changed my mind about the people appointed as my attorneys. Can I just change that without making an LPA?

A: No. You will need to make an LPA appointing new attorneys. If you do not wish to make an LPA but wish to terminate

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the EPA, you should sign a deed of revocation to cancel it.

Q: Can I appoint more than one person to act under an LPA?

A: You can appoint more than one person to act as attorneys under an LPA. Two or more attorneys can be appointed to act either jointly, jointly and severally (which means they can act independently of each other) or even jointly in relation to some decisions and jointly and severally in relation to others.

Q: Can I provide for a replacement attorney in case my first choice is unable to act when the time comes?

A: Yes, the LPA form provides for replacement attorneys who can take over in the event of your first choice attorneys becoming unable or unwilling to act.

Q: Once I have made an LPA, can it be used straightaway to help me?

A: Before an LPA is used it must be registered with the Office of the Public Guardian, either by the donor or by the attorneys. A property and financial affairs LPA can be used at the request of the donor while he or she has capacity, with the attorneys taking complete control if the donor subsequently loses capacity.

The health and welfare LPA can only be used when the donor lacks mental capacity to make his or her own decisions.

Q: Why should I make an LPA?

A: By making an LPA as well as a Will you can ensure the appropriate management of your affairs during your lifetime as well as following your death. Should you become either physically or mentally incapacitated in the future, you will have taken a valuable step in making an emotionally difficult time easier for yourself and your family.

If you require further information, please discuss with your usual contact in the firm or email Una Angus at una.angus@ts-p.co.uk

Alternatively, please speak with Una or another member of the Private Client team on 01892 510000.