

Lasting Powers of Attorney

Factsheet

Specialist services from the
Tax and Estate Planning Department

1. Introduction

What are Lasting Powers of Attorney?

Lasting Powers of Attorney (also known as “LPAs”) replaced the old ‘Enduring Powers of Attorney’ in 2007.

They allow you to appoint somebody else (your ‘Attorney’) to act on your behalf should you become unable to do so yourself through mental or physical incapacity.

There are two types of Lasting Powers of Attorney, Property and Financial Affairs and Health and Welfare.

Why should I make them?

We all know we should write a Will, but too few of us know we should also make LPAs.

Our population is ageing and it is estimated that by 2025 more than 1 million people in the UK will have dementia (according to the Alzheimer's Society). 1 in 5 people over the age of 85 are already living with it (February 2012) and rates are significantly higher among women than men.

Lasting Powers of Attorney are recognised by all financial institutions, care homes, local authorities, HMRC, DWP and pension companies.

When should I make them?

LPAs are not just for the elderly. Mental or physical incapacity can occur at any time and planning ahead will ease the potential burden on loved ones.

You need to have mental capacity to make them, so the “I’ll deal with this when I’m older” outlook may not be a good idea.

What if I don’t make them?

If you become mentally incapable and do not have LPAs in place, your relatives will face long delays and expense in applying to the Court of Protection, who may or may not allow them to act on your behalf. An independent professional person such as a solicitor may be appointed instead of your relatives, which may not be your wish. In the meantime, your assets (including joint assets) can be frozen and made inaccessible, making an already difficult situation even more stressful for your family.

‘Insurance Policy’

Think of LPAs as an insurance policy like your car insurance – you hope it will never need to be used, but if the worst does happen, it’s in place to make things easier.

2. Property and Financial Affairs LPA

What is it?

This document will give authority to your Attorney(s) to be able to manage your financial affairs on your behalf.

What authority will my Attorney(s) have under it?

Your Attorney(s) will be able to do the following on your behalf:

- Sell your property
- Liaise with financial institutions in relation to your accounts and holdings
- Claim and receive benefits such as pensions
- Pay any liabilities you owe with your funds
- Pay for a package of care to enable you to stay at home or move to a care home

How important is it to make it?

Very. Should you lose your mental capacity, the banks and other financial institutions are (quite rightly!) very strict and will not allow your relatives to access your funds on your behalf without this legal authority, however much money you do or do not have. Should your property need to be sold, your relatives will not be able to deal with this for you without this legal authority.

Finally, if this document is not in place, your relatives may have to pay for care fees or other liabilities from their own funds whilst an application is made to the Court of Protection.

3. Health and Welfare LPA

What is it?

This document will give authority to your Attorney(s) to be able to make decisions on your behalf in relation to your health and welfare.

What authority will my Attorney(s) have under it?

Your Attorney(s) will be able to make decisions in relation to the following on your behalf:

- Give or refuse consent to specific care, including medical treatment
- Insist you stay in your own home rather than be moved to a care home if this is your wish
- Choose the right care home most suitable for you
- Day-to-day decisions such as diet, dress or daily routine
- Have an active involvement in the continuing care you receive

How important is it to make it?

Very. Without this document your relatives will have no authority to make decisions on your behalf. Although your next of kin would be consulted by medical professionals, the doctors' decision in relation to treatment would be final. With this document in place, however, your Attorney's/Attorneys' decision will be legally binding.

4. Your Attorney(s)

Who should your Attorney(s) be?

People you trust who will be capable of managing your financial affairs. It is usual to appoint your spouse and children, however you must consider the appointment(s) carefully as they will have scope to manage all of your money and even sell your property so you must trust them implicitly. Your Attorney(s) must be over 18 year old and not be bankrupt. Alternatively, you may wish to appoint a professional such as a solicitor or accountant. The Directors of Whitehead Monckton are happy to take on this role in most circumstances, however due to additional obligations placed on professional Attorneys we ask that you subscribe to our “Professional Attorney Programme” in order for us to be able to carry out those obligations. Please discuss the Professional Attorney Programme with your legal advisor for further information.

How many Attorney(s) can there be?

You can appoint as many Attorney(s) as you wish, however it would be impractical to have any more than four acting on your behalf at any one time. You can also appoint replacement Attorney(s) to step in should your original Attorney(s) become unavailable through mental incapacity, death or bankruptcy

How to appoint more than one Attorney

You can appoint them either ‘jointly’ or ‘jointly and severally’. Jointly means all Attorneys will have to make decisions together. This means that should one joint Attorney die (or become bankrupt) the others would be unable to continue to act. Jointly and severally means your Attorneys can make decisions independently of each other; should one die (or become bankrupt) or be unavailable to act, one could act alone. In most circumstances we recommend you appoint your Attorneys in a joint and several manner for increased flexibility, however you should discuss this with us further if you are in any way unsure.

Should I add any preferences?

You are able to include appropriate guidance points for your Attorney(s) to keep in mind when acting upon your behalf. However, in most circumstances we recommend that you do not include preferences to allow your Attorney(s) maximum flexibility. Please feel free to discuss this with us if there is anything you feel strongly about.

5. Certificate Provider

What is a Certificate Provider?

At the time you execute your LPA(s) you must have mental capacity, which means you must be able to retain information, weigh up the options associated with it and make an informed decision. Somebody must act as your Certificate Provider to confirm you have the requisite capacity, that you understand the purpose of the document you are creating and what it allows your Attorney(s) to do, that no pressure has been used to persuade you to create it and there is no other reason why you should not create it.

Who can/cannot act?

The Certificate Provider can either be a professional with relevant skills and expertise such as a lawyer or healthcare professional, or alternatively it can be an adult who has known you for at least two years.

There are a number of people who *cannot* act. If you wish someone other than your legal advisor at Whitehead Monckton to act please discuss this with us and we will ensure you choose an appropriate alternative.

What responsibility does this role hold?

Acting as a Certificate Provider is a big responsibility as they are confirming the person making the LPA has capacity. If your capacity is questioned any time after the LPA is created, your Certificate Provider would be questioned about how they formed their opinion.

Whitehead Monckton

Your legal advisor is able to act as your Certificate Provider in the majority of cases. Should you choose to use a different Certificate Provider and any errors are incurred, Whitehead Monckton will need to make an additional charge in accordance with your letter of engagement to correct those errors.

6. Life Sustaining Treatment

You need to consider the role of your Attorney(s) should you require life sustaining treatment. At the time of executing the Health and Welfare LPA you will be asked to confirm whether you wish you Attorney(s) to have the authority to accept or refuse life sustaining treatment on your behalf.

7. Registration... The Office of the Public Guardian

Your LPA(s) cannot be used by your Attorney(s) until they are registered. In most circumstances we recommend you register the document(s) immediately to avoid delay at the time they are required, however you should discuss this with us for tailored advice to suit your circumstances.

As part of the registration process you can serve notice on up to five people of your choice. If you would like to notify anyone of the registration process please provide their details.

When do you want your Attorney(s) to act?

You can allow you Attorney(s) to make decisions:

- as soon as the LPA has been registered by the Office of the Public Guardian; or
- only when you don't have mental capacity

When you have mental capacity you will be in control of all decisions affecting you. If you choose the first option, your Attorney(s) can only make decisions on your behalf if you allow them to. They are responsible to you for any decisions you let them make.

Your Attorney(s) must always act in your best interests.

8. Fees

The firm's fixed charges are listed below. Please note VAT at the prevailing rate (currently 20%) will be added. **If you instruct Whitehead Monckton to complete Will(s) at the same time as LPAs a 10% discount will be applied to our usual LPA fees (discounted fees displayed on right hand side).**

10% off

One Person | One type of LPA

Prepare LPA	£500
Deal with the registration process*	£100

One Person | One type of LPA

Prepare LPA	£450
Deal with the registration process*	£ 90

One Person | Both types of LPA

Prepare LPA	£650
Deal with the registration process*	£150

One Person | Both types of LPA

Prepare LPA	£585
Deal with the registration process*	£135

Couple | One type of LPA

Prepare LPA	£650
Deal with the registration process*	£150

Couple | One type of LPA

Prepare LPA	£585
Deal with the registration process*	£135

Couple | Both types of LPA

Prepare LPA	£950
Deal with the registration process*	£250

Couple | Both types of LPA

Prepare LPA	£855
Deal with the registration process*	£225

There is also a registration fee of £82 per document payable to the Office of the Public Guardian (OPG).

N.B. If your gross annual income is below £12,000, you may be entitled to a 50% fee remission on OPG fees. If you receive certain types of benefits (such as Income Support) you may be completely exempt from paying the OPG registration fee. Please discuss this with your legal advisor if you believe you may be eligible.

N.B. * Legal fees quoted relate to registration of LPAs for applications made at time of instruction. Legal fees for an application to register LPAs at a later date will be subject to higher legal fees.

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With offices in Maidstone, Tenterden and Canterbury, Whitehead Monckton has grown to be one of the largest legal practices in the county.

We are also a legal and financial practice unique to Kent and proud to be so.

We balance our practice between our business and personal clients. This ensures that every single client will receive the very best advice, support and quality of work, no matter what their background, tailored to their specific needs.

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