

Guide for Attorneys

What is A Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document nominating one or more attorneys to deal with the affairs of another person (known as a donor). The attorney is chosen by the donor as someone they can trust implicitly and very often it is a close relative. They can, however, be almost anyone provided they are over the age of 18 and not bankrupt at the time they sign.

What is the purpose of an LPA?

An LPA is a precautionary step taken by the donor in case he or she considers they may be mentally incapacitated in the future, or otherwise prevented from handling their own affairs. It literally donates their power to act on their own behalf, to you as an attorney.

An LPA can therefore be a very powerful document. The donor will decide, perhaps with the benefit of advice from family and professional advisers, what powers they wish to donate, and in what circumstances. If asked, you need to decide whether you wish to accept the responsibility of becoming an attorney.

Types of LPA

There are two types of LPA. One deals with Property and Affairs (general financial issues) and the other deals with Personal Welfare (health and social issues).

If you are appointed an attorney under an LPA which deals with the donor's Property and Affairs you may be called on to act for them and on their behalf to organise their finances, pay their bills, even perhaps to sell their property.



Sometimes the donor will grant general powers, giving you control over their financial affairs and empowering you to act generally on their behalf and in their interests. In other circumstances the donor may grant a specific power or powers, for example, to pay their bills but not to sell their assets.

If you are appointed an attorney under an LPA which deals with the donor's Personal Welfare you may be required to take decisions about their future healthcare, living arrangements, even to decide on whether or not to give or refuse consent to life-sustaining treatment on their behalf.

The donor may choose to give you general powers or they may elect to impose restrictions or conditions.

Joint Attorneys

Sometimes the donor will appoint more than one attorney. This can be as a safeguard, because an LPA can be a very powerful tool as has been noted. Sometimes it is because the donor wants, as well as a close relative or friend, a professional person such as an accountant or a solicitor, to ensure the duties can be carried out correctly and efficiently. Attorneys may be joint, or joint and several. If you are appointed jointly with one or more

others all decisions will have to be taken jointly (for example, all your signatures will be required on cheques). This can be inconvenient and, if one attorney cannot act for some reason, or dies, the power will fail.

If you are appointed jointly and severally you can act separately or together with your fellow attorney(s). This is more flexible. The donor may, if they wish, impose restrictions on you (for example, by requiring that all have to sign for transactions worth over £1000).

Can you charge for your services?

Non-professional attorneys are not expected to charge for their services, although they should be reimbursed for reasonable expenses. Professional attorneys such as solicitors, accountants or banks are entitled to charge.

Registering the LPA

An LPA (of either type) must be registered before it can take effect. Registration is completed by the Office of the Public Guardian (OPG) to whom application must be made.



In most cases the donor will have nominated other individuals (up to five) whom they wish to be advised that registration has been applied for. This is to allow any of them to

object to the registration if they so wish. If any objection is made the situation will be resolved by the Court of Protection.

You will not be able to use the LPA until it has been registered. You will be able to act as an attorney once the LPA is registered. It will take at least 35 days from the date of application before the LPA is registered to allow time for any objections. In practice, the total time for registration is significantly longer.

In the case of a Personal Welfare LPA the power cannot be used before registration and then only if the donor cannot make the required decision for themselves. The same procedure for hearing possible objections will also prevail.

Once registration is approved, the LPA will be sealed on each page with a Court of Protection stamp and returned to you. After registration you must answer to the Court of Protection if anyone questions your actions.

Many of the institutions with whom you will have to deal on the donor's behalf (such as their bank, building society, nursing homes, Benefits Agency, HM Revenue & Customs etc.) will require sight of the sealed document before they will act on your instructions.

Duties & Responsibilities of an Attorney (Property & Affairs)

As the appointed attorney you are bound to act in the best interests of the donor and consider their needs and wishes. You must not take advantage of the donor's situation to gain any benefit for yourself and you should keep the donor's money and property separate from your own. You are now managing someone else's money and have legal duties which you must respect.



Can I make gifts?

You have limited power to make gifts. For example you can make seasonal gifts (e.g. at Christmas) to people to whom the donor might normally have made gifts. You can also make gifts, to appropriate recipients, on anniversaries such as birthdays. Or, you could make donations to any charity the donor might have been expected to support.

If you want to make larger gifts of money or property, perhaps as part of Inheritance Tax Planning, you must apply to the Court for permission.

Should I keep accounts?

Yes, you have a duty to keep accounts of all your dealings for the donor, which you must be able to produce at any time. You should keep a full record of all the donor's income and expenditure, together with receipts, invoices and bank statements. The Court of Protection can ask that you produce accounts at any time.

Can I sell the donor's house?

Yes, if you feel this is in the donor's best interests and provided there are no restrictions in the LPA which prevent this. You must be confident there is no reasonable chance the donor will be able to return to live at home.

You do not need the approval of the OPG or the Court unless you want to buy the property yourself, you want to give it to someone else or the sale is below market value.

Duties & Responsibilities of an Attorney (Personal Welfare)

Your duties are to act on the donor's behalf in matters pertaining to their health and general well-being.

Your duties may be general and without prescribed limit in this regard, including making decisions on life-sustaining treatment, or they may be subject to restrictions or conditions, depending on what the donor has stipulated.

Can I stop acting as attorney?

Yes. Stopping to act as an attorney is known as "disclaiming the power". If the LPA is registered you should ask a solicitor to prepare a Deed of Disclaimer.

If you are the only attorney the usual step is for someone to apply to the Court to appoint a Deputy.

If there are joint attorneys and one wants to give up the LPA can no longer be used and the donor's affairs will have to be managed in another way.

If there are joint and several attorneys the remaining attorney(s) can continue to act under the LPA but the OPG should be informed about the change.

It is not possible to add extra attorneys to a registered LPA.

Where can I get further advice?

If you need advice on practical, financial or legal matters, you should consult a solicitor, or other professional or financial adviser.

What are the powers of the Court of Protection?

The Court has powers to intervene in running a registered LPA if anyone suspects you are not acting in the donor's best interests. It may also ask you to produce accounts, answer for your dealings, provide documents or information, or explain why you took certain actions. Ultimately the Court has power to suspend or end your duties.

What happens when the donor dies?

The LPA automatically ceases on the donor's death. You should send the original LPA and the death certificate to the OPG as soon as possible.

The donor's estate should now be dealt with as per the Will, or the rules of intestacy if there is no Will. Take professional advice as necessary.