

## \* Lasting powers of attorney

---

### What are they and why should you consider making one?

A Lasting Power of Attorney (LPA) is a legal document that enables anyone aged 18 or over (referred to as a 'donor') to choose one or more trusted friends, advisors or family members (referred to as 'attorneys') to make decisions on their behalf if and when they are unable to make the decisions themselves.

### Types of LPA

There are two different types of LPA each requiring the completion of a separate (but very similar) legal form. You can choose to put in place either one or both types of LPA.

- LPA for Property and Financial Affairs. This enables your attorney(s) to make decisions regarding the management of your money and assets, such as paying bills, managing bank accounts, collecting benefits and pensions, or buying and selling investments and/or property on your behalf.
- LPA for Health and Welfare. This enables your attorney(s) to make decisions which impact upon your medical condition and personal welfare such as where you live, your day-to-day care or specific medical treatments. If you so choose it can also allow your attorney(s) to give or refuse consent to life sustaining treatment on your behalf.

### Why do I need a LPA?

If you do lose the mental capacity to make your own decisions, having a LPA in place means that your chosen attorney(s) are people that you trust to deal with your affairs for you. Without a LPA a deputy application would need to be made to the Court of Protection for them to designate somebody to act on your behalf. In addition to being a very time consuming and expensive process this also means that you have no control over who is chosen to act as your deputy.

Once registered (see below) the LPA for Property and Financial Affairs can be used both at your direction, for example if you are out of the country on an extended holiday or business trip, or following your loss of capacity. The LPA for Health and Welfare can only be used by your attorneys if you have lost the mental capacity to make decisions for yourself.

### Formalities of a LPA

LPAs can only be created when the donor still has their mental capacity. Accordingly LPAs should be considered by people of all ages.

When completing your LPA you will need a 'certificate provider' who is required to go through your LPA with you before you sign it to ensure that you understand the document, that you have the mental capacity required to complete it and that you are not being put under any pressure to complete it. Your certificate provider then needs to sign your LPA as confirmation that this has been done.

LPAs need to be registered with the Office of the Public Guardian (OPG) before your chosen attorney(s) are able to act on your behalf. The registration process takes around 10 – 12 weeks as the OPG are required to give people you have chosen the chance to object to the registration if they consider it appropriate to do so.

### Your attorneys

Unless you choose to restrict the powers granted to your attorney(s) they have full authority to act on your behalf. You can also choose to include in your LPA non-legally binding guidance to your attorney(s). You can also choose to name one or more replacement attorneys if you so wish.

If you choose to appoint more than one attorney you will need to decide whether you want your attorneys to act on a joint basis (all of your attorneys must act together), a joint and several basis (any one or more of your attorneys can act at any one time) or a joint basis for some decisions and a joint and several basis for other decisions.

### When can a LPA be revoked?

The donor can revoke their LPAs at any time provided that the donor still has their mental capacity. LPAs for Property and Financial Affairs are automatically revoked if either the attorney(s) or the donor is made bankrupt.

If the donor has named their spouse or civil partner as one of their attorneys and subsequently their marriage or civil partnership is dissolved the appointment of that spouse or civil partner is automatically revoked.

### Further information

For further information on this or on any other Private Capital matter you may have, please contact us via:

[See key contacts](#)

Disclaimer: This briefing is intended to highlight issues only for the purposes of general interest and is not intended to be a comprehensive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content. Last updated: June 2015. Ref: 29983-3

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at <http://www.sra.org.uk/handbook/>. Its registered office and principal place of business is 138 Edmund Street, Birmingham, West Midlands, B3 2ES. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.

*Great service... Great people...*

[clarkewillmott.com](http://clarkewillmott.com)