

* What an attorney can and cannot do

Making sure you act within your powers

An attorney derives their authority from the power of attorney that appoints them. Their authority will differ depending on whether they were appointed under an enduring power of attorney or a lasting power of attorney.

The table overleaf summarises some of the key actions which an attorney can and cannot take under each type of power.

When considering the scope of an attorney's power it is important to bear in mind that the overriding duty of an attorney is to act in the best interests of the donor, considering their needs and wishes as far as possible. Lasting powers of attorney may also contain additional restrictions on the attorney's power – for example that certain property is not to be sold – which could override the position set out overleaf.

Further information

For further information on this or on any other Private Capital matter you may have, please contact us via: [\[AC*01\]](#)

See key contacts

What an attorney can and cannot do – comparison table

Action	Enduring Power of Attorney	Lasting Power of Attorney (LPA)
Use the power before registration	Yes	No
Use the power before and after the donor is incapacitated	Yes	Yes - Property & Affairs LPA No - Health & Welfare LPA can only be used after incapacity
Deal with the donor's financial affairs	Yes	Yes - Property & Affairs LPA
Make decisions about the donor's personal welfare	No	Yes - Health & Welfare LPA
Execute a will for the donor	No - Court's consent required	No - Court's consent required
Provide for the financial needs of those people the donor might be expected to provide for	Yes	May be possible if authorised by LPA
Make birthday, wedding and Christmas gifts	Yes	Yes
Make gifts other than small, customary ones	No - Court's consent required	No - Court's consent required
Execute a Deed of Variation on behalf of the donor	No - Court's consent required	No - Court's consent required

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: 16982-1

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.