



LASTING POWER OF ATTORNEY?



Who Will Guide You?

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Do YOU need a Lasting Power of Attorney (LPA) ?

Not just for the elderly, it is recommended that an LPA be in place for anyone over the age of 18. Car accidents, Stroke, Longterm illness and Mentally debilitating illnesses can affect us at any time.

What is an LPA ?

A **Lasting Power of Attorney** enables you to legally appoint a person you trust to make decisions about your personal welfare and/or property and affairs if you no longer wish to or are unable to, due to disability or you lack mental capacity. (Mental Capacity Act 2005)

The LPA can be given in either of the two areas Personal Welfare or Property and Financial Affairs or both. The decision to give the Lasting Power of Attorney must be done in advance of it being needed and registered before use. The person giving the power must fully understand what he or she is agreeing to.

It is important that a Lasting Power of Attorney is made with a view to future possible use. Unfortunately, unforeseen occurrences and illness may prove the LPA too late to complete.

Personal Welfare

Only coming into place when you are unable to make the decisions yourself, your appointed person(s) known as an attorney, would make decisions for you in relation to personal welfare and healthcare. Carrying out any recommendations that you outlined in your LPA. Decision making can be restricted but can cover all aspects of your day to day living through to which treatments you would accept. It is entirely up to you as to which powers of decision making are given to the attorney. If at any point you become lucid or able physically to make you own decisions, then the power lapses until it is required again.

Property and Financial Affairs

Again, the key is planning for the unexpected situation where through disability or lack of mental capacity you are temporarily or permanently unable to make decisions for your property and financial affairs. The LPA would enable a person you Trust to carry out day to day financial actions for you such as collecting benefits, writing cheques and paying bills, it can also include buying or selling your house. A spouse does not have the automatic right to access financial assets when their wife/husband has become incapacitated in the short or long-term. Including joint assets and bank accounts.

Common Misconceptions

My children know what I want.

Since October 2008 “next of kin” cannot make decisions for you, so you need to legally appoint someone you trust to speak on your behalf.

I’m married or in a civil partnership my wife/husband can make any necessary decisions.

Husband and wife can make decisions for health and welfare issues such as medical and care. However, if they are both in a car accident for example, then they have no-one available legally to step in and help make decisions.

Later in life if both husband and wife lose capacity again no-one is in place.

Should the husband or wife die the support is lost and no-one is in place.

A husband or wife has no automatic legal access to their spouse’s financial assets. Without an LPA for Property and Finance bank accounts, Isa’s, Investments, Property etc are not accessible should the spouse lose mental or physical capacity.

We have a Joint Bank Accounts so we don’t need an LPA

Joint bank accounts allow access to all parties. However, should any of the people on the account lose mental or physical capacity their share of the funds, and all monies coming into the account in their name are frozen for their protection. If the account holders have LPA’s in place should one account holder be incapacitated the others can act on their behalf. This is particularly important for spouses and couples as a joint account may be used to fund day-to-day expenses, pay bills and mortgage/rent payments. Similarly, in the case where children are on elderly parent’s/grandparent’s bank account. Should the parent lose capacity they can no longer access monies in the parent’s name, creating a difficult but avoidable financial situation.

We own the house jointly so if one of us lost capacity the other could sign if we wanted or needed to move.

As above no-one has access to your financial assets, including any property you own if you lose mental or physical capacity. A joint owner has rights over their share not the whole property.

We are Common Law husband and wife so have the right to make decisions for each other

Under the Mental Capacity Act of 2005 common law is not a recognized marriage or civil partnership. As such without LPA's in place medical, care and financial decisions will be made by the local authority and medical professionals. These decisions may not be inline with your requirements and needs.

I'm single why would I need LPA's?

Without LPA's medical, care and financial decisions will be made for you by the local authority and medical profession, not by your friends and/or family. It is extremely important that someone you trust steps in if required. This would minimise the effect the change in circumstances would have in your life.

My attorneys can only act for me in terms of Finances and Property if I lose capacity.

When the LPA Property and Finance has been registered with the OPG (Office of the Public Guardian) you can choose if your appointed attorneys can act for you if you ask them to before you have lost capacity. Perhaps you are away on holiday and your house sale is delayed. You can ask your attorneys to sign on your behalf. Not keen on online banking you can ask your attorneys to access you account and pay bills for you. Travel though work nationally or internationally? Having a friend or family member appointed through an LPA allows them to act on your instructions whilst you are away.

I have a Financial Advisor he can access my finances for me

Not so. As soon as you lose mental or physical capacity your financial advisor cannot access your finances. Your financial advisor is only authorised to take instruction from you or appointed attorneys with a registered LPA.

I'm young and healthy I don't need any LPA's

If you are over 18 your parents or siblings cannot act for you. Although illness may not be a key issue. Unfortunately, you can lose mental or physically capacity through no fault of your own, in the short or long-term, accidently cycling, diving off a boat on holiday, skiing, running for the metro, driving or a simple trip down the stairs. LPA's are extremely important for anyone over the age of 18.

Points to Consider Before Making an LPA

Who do I choose?

Ideally someone your age or younger that you trust and is a family member, friend or combination of both. They cannot be a declared bankrupt for the finance and property LPA.

How Many People Can I Appoint?

You can appoint up to 6 people. It is recommended to have more than one just in case one is unavailable when required.

When can I start to use the LPA?

The LPA's have to be registered with the OPG before they can be used. On completion of the forms they are sent to the OPG. The current turnaround from sending to receiving a registered LPA is 10 weeks (27.11.2017)

What level of Capacity is required to complete an LPA?

This is outlined in the Mental Capacity Act of 2005. However, differing levels of understanding are acceptable. A person may not have the ability to understand the full intricacies of the process but understand that they wish a given person to help with making decision for them for medical, care and finances. The importance is that they understand why they are giving authority, what the attorney will be able to do, that they have not been coerced or pressured and do not have a mental or physical impairment to their decision making or understanding.

Do I need both LPA's?

Yes, as if you need one you will probably need the other.

How to Open the Conversation

Although LPA's are a very important part of estate planning it can be difficult to broach the subject with family members or friends. Often the immediate response is that you are trying to take away control or that you feel they are unable to cope? Not so. LPA's are a preventative measure, what if? cover.

It is hoped that the power given in the LPA's are never ever needed. However, we are living much longer and the possibility of "some bumps" in the road are not unrealistic but a fact of life. It is important that we all choose someone we trust to step in and *fight our corner* or make decisions for us if we can't. It can be really distressing for your family or friends if you are suddenly ill or in an accident and they cannot help to make medical decisions for you or bills remain unpaid.

Your chosen people – attorneys, only have the power to act for you if you ask them to or if it is established that you are unable to make decisions. Your attorneys need not know any of your personal medical or financial details on a day-to-day basis whilst you are fit and healthy. They *remain in the wings* until as and when required. As soon as you are fit again their decision-making powers lapse until the next time. A perfect back-up by people you know and trust rather than relying on medical or local authority professionals.

Case Studies



NOT JUST FOR THE ELDERLY

Jenny's son Mark was having a fantastic time on holiday in Italy with his friends when they decided to take a boat trip out to a small Island. The beautiful clear water was so tempting, they decided to jump in. Mark was a good swimmer and decided to dive in. Unfortunately, he hit a sandbar and was paralysed from the neck down. Fast thinking friends and the actions of the captain of the boat meant that Mark was quickly back on land and treated in hospital. Mark was transferred back to the UK. Mark was over 18 and Jenny did not have lasting power of attorney so she was consulted on Mark's care but could not make the ultimate decisions, this was down to the doctors. Fortunately, after a few weeks, Mark gained consciousness and the ability to give his mother power of attorney.

[Unexpected accidents in life can happen.](#)

Client Case Study names have been changed.



Early Stages of Alzheimer's

Over the past six years, Tony Smith has been forced to watch as his partner, Caroline Whitehead, has lost the ability to do anything for herself. At 52, Caroline was diagnosed with early onset Alzheimer's - a very aggressive form of the incurable disease.

When Caroline got Alzheimer's she used lasting power of attorney to put Tony in charge:

Tony says: 'We were lucky she was diagnosed relatively early - it gave us the time to get our affairs in order. But it is terrifying how quickly your life can change. Without it Caroline's finances would have been frozen and I don't know how we would of coped. Applying to the courts would of taken months.'

[Be Prepared](#)

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Elderly Parents

The time to draw up a power of attorney is when it is least needed, which is why so few people do it.

But the threat of long-term illness such as dementia – or a life-changing accident – make it an important task to tick off any financial 'to-do' list. Over the next decade, the number of people with dementia will balloon to a million, according to the Alzheimer's Society.

Peter, 66, who is married to Jayne, 61, and lives in Hartley Wintney, Hampshire, was appointed power of attorney for his mother Doreen Tacchi in 2007.

In the seven years between 2007 and 2014, Doreen had been diagnosed with dementia.

The experience had a profound impact on Peter. He says: 'I didn't ask Mum what she wanted years ago when she would have been able to tell me, I just did what I thought was best for her.

'You think your parents' financial business is their own, but really it is yours too and one day you may need to take control. There needs to be an open dialogue between parents and children so everyone is prepared for whatever is around the corner. Mail Online

[Act Early](#)

NOW IS THE TIME TO HAVE A LASTING POWER OF ATTORNEY

Call Enigma Wills & Trusts Ltd

To answer your questions and help you to have peace of mind for
yourself and those you care about.

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