

Why should I make a Lasting Power of Attorney – Property & Affairs (an ‘LPA-PA’) ?

Everybody who makes a Will should also make a *Lasting Power of Attorney – Property & Affairs* (an ‘LPA-PA’).

An ‘LPA-PA’ is a document that you sign to appoint somebody to act for you should you for any reason become unable to manage your own financial affairs.

If you care enough about what happens to your assets after you die, you ought to care even more about keeping them safe whilst you are alive.

*While a Will ensures that your estate is distributed according to your wishes when you die, an LPA-PA **protects** your assets by authorising somebody **chosen by you** to deal with your affairs on your behalf (should you become unable to manage them yourself) **whilst you are alive**.*

If you **do not** have an LPA-PA, then if for any reason you suddenly become unable to manage your own affairs, e.g.

- You suffer an accident and are confined to bed or hospital
- You suffer a more serious accident which permanently incapacitates you
- You become mentally incapacitated as a result of old age or for some other reason

... then the **only** way that your financial affairs can be managed is by an application (by a relative or other person close to you) to the Court of Protection. This can take up to 10 months and cost up to £1,000 to process – during which time your finances could be seriously damaged – and the person authorised to handle your affairs on your behalf is not only unlikely to be who you would have chosen, but may even be a Court Official – who can (and will) charge every time he/she acts for you.

If you have an LPA-PA, your chosen representatives can act for you straight away if you become unable to handle your own affairs or if you become mentally incapacitated.

Note that you must be mentally capable to make an LPA-PA. Therefore - just like a Will - **if you don't have one then by the time you really need one it's too late**.

How an LPA-PA works

This is the normal process that you go through when you make an LPA-PA: -

1. You decide and specify under what circumstances the LPA-PA is to start – e.g. :-
 - EITHER straight away
 - OR if for any reason you cannot handle your own affairs
 - OR if you become mentally incapable
 - OR for some other specified reason
2. You create and print the LPA-PA, and sign it (or have it signed for you) in the presence of a witness.
3. You get your Attorney(s) and a ‘Certificate Provider’ (see next page) to sign it.
4. You or your Attorney(s) register the LPA-PA at the Office of the Public Guardian – who will stamp it on every page. This can be done at any time right up until the LPA-PA is needed.
5. You store it somewhere safe.
6. If the ‘conditions’ (if any) you specified in step 1 above come to pass, then the Attorney(s) you have appointed can act for you **straight away**: they take the LPA-PA document to your bank, etc. (plus any proof that the ‘conditions’ have been met) and use it as their ‘authority to act’.
7. If you die, the LPA-PA ceases and your Will ‘takes over’.

What you can do with an LPA-PA

A *Lasting Power of Attorney – Property & Affairs (LPA-PA)* is a bit like a normal Power of Attorney, except that it continues if you become mentally incapacitated (a normal Power of Attorney doesn't).

In particular, you can **specify** any or all of the following in an LPA-PA: -

- The identity of your **Attorney(s)** and, if you appoint more than one, whether they must act all together ('Together') or whether they can act separately ('Together and Independently') or a combination of the two.
- You can specify **replacement** Attorney(s), in case one or more of your original appointed Attorneys cannot or refuses to act – plus (if you want) conditions regarding who is to replace whom, etc.
- What **restrictions** are to be placed on your Attorney(s) (e.g. they may not act while you are able to conduct your own affairs, or they may not act unless you are mentally incapacitated, or they may not act without the written consent of a specified relative on specified matters, or they can only sign cheques for you, or they can only deal with matters of less than a specified amount of money – e.g. £1,000, or they may deal only with your financial affairs and not your property, or they may deal only with certain specified properties of yours, or they may deal only with certain bank accounts, etc.)
- You can offer your Attorney(s) **guidance** on how they are to act (which they are not legally obliged to follow but will still give them an idea of how to act for you).
- You can specify what **fees** (if any) your Attorney(s) may be paid from your estate (note that by law they are allowed to claim expenses).
- As an important **safeguard** you can specify people who must be **notified** if and when an application to register the LPA-PA is made. If they think that something is wrong, these people can then object to the registration of the LPA-PA (i.e. they can stop it from being used).
- As another **safeguard**, a '**Certificate Provider**' must also sign the LPA-PA to confirm that you were mentally capable when you made it and that you have not been pressurised into making it. Such a person could be your doctor, or somebody who's known you for at least the past 2 years (more details are provided in the Instructions document that you get in your LPA-PA package). Note that if you take up the **first** safeguard mentioned above (people to be notified) then **one** 'Certificate Provider' is required. If you don't, then **two** 'Certificate Providers' are required.

You will see that the scope for both what you can do and the protection that you can add into the LPA-PA is pretty wide! It's certainly more flexible and less open to abuse than the old 'Enduring Power of Attorney' that it replaced on October 1st 2007. To make things a little easier, we have incorporated some 'standard scenarios' into our online LPA-PA drafting software so that all you have to do is 'tick a box' to create your LPA-PA. This takes all of the pain out of the creation of what can be quite a sophisticated document.

Once you have made (and signed/witnessed) your LPA-PA, and it has been registered at the Office of the Public Guardian (we give you instructions on how to do this), should it become necessary your Attorney(s) can start to act straight away unless you have placed a **restriction** specifying otherwise (note that we recommend the restriction which makes the LPA-PA only valid if you are unable to conduct your own affairs).

Finally, please note that, just like a Will, an LPA-PA created using our site is valid for immovable assets (i.e. property) in England and Wales only and movable assets (e.g. bank accounts) in some other countries. We recommend that if you have immovable assets outside England and Wales you should make the equivalent of an LPA-PA in the country(s) concerned in addition to the one you make using our site.

How to make an LPA-PA

If you've **already** made a Will at our site, login and select the '*Make a Lasting Power of Attorney*' option.

If you **haven't** already made a Will at our site, you have 2 options: -

- (a) If you want to draft/make a **Will and an LPA**, click on 'Write Your Will Now' or 'CLICK HERE TO TRY OUR SERVICE WITHOUT OBLIGATION' at our website.
- (b) If you want to draft/make **just an LPA**, click on 'Make an LPA Only' on the menu on the left hand side of the page at our website.

Once you are signed in and/or have selected a drafting option, all you have to do is: -

1. Complete the short questionnaire, view your document summary, pay, download and print.
2. Sign your LPA-PA in the presence of at least 1 witness (who cannot be your Attorney).
3. Get your Attorney(s) to sign where indicated on the LPA-PA to accept their responsibilities (again in the presence of a witness).
4. Get your certificate provider(s) to complete and sign where indicated.
5. Register the LPA-PA at the Office of the Public Guardian

That's all there is to it. Just like a Will, you don't need a Solicitor at any stage – and **we give you personalised and comprehensive instructions** for every step.

Final Note – Personal Welfare

You may have heard that with a Lasting Power of Attorney you can also appoint people to look after your **Personal Welfare**. This is true, but it's a **completely separate document** (appropriately called the '*Lasting Power of Attorney - Personal Welfare*' or '*LPA-PW*' for short).

We do not currently offer this second (of the two) type of Lasting Power of Attorney document, but we plan to do so before the end of 2007.