

Lasting powers of attorney

What are lasting powers of attorney?

A power of attorney is a legal document which allows you to give another person (your attorney) authority to make decisions on your behalf.

Previously, if you wanted to appoint someone to look after your property and finances, you could prepare an enduring power of attorney (EPA).

From the 1st October 2007, no new EPAs can be prepared, and if you wish to appoint an attorney to make decisions on your behalf you need to prepare a new type of power of attorney, a lasting power of attorney (LPA). There are two types of LPA, one in respect of property and financial affairs and one in respect of health and welfare decisions.

Property and financial affairs LPAs

This type of LPA works in a similar way to an EPA, and it will allow your attorney to deal with your property and finances. It is a flexible document that may be used before the onset of any mental incapacity (if you want it to) as well as lasting beyond your incapacity. In order for your attorney to use this power on your behalf the LPA needs to be registered with the Office of the Public Guardian.

Health and welfare LPAs

This is an entirely new type of power of attorney. It will allow your attorney to make welfare and health care decisions on your behalf if you lack the mental capacity to make these decisions yourself. This LPA can only be used if you lack mental capacity, and it also needs to be registered with the Office of the Public Guardian.

Do I need an Attorney?

Appointing an attorney to deal with your property and financial affairs is a useful precaution against future incapacity. If you do not restrict the power, then your attorney may also use the document to act at your direction if you are out of the country or physically incapacitated in some way.

If you do not have an EPA or a property and financial affairs LPA and you lose capacity, it may become necessary for an application to be made to the Court of Protection for an order appointing someone else (a deputy) to act on your behalf. This can be expensive and time consuming.

If you have strong views about your future care or medical treatment, or if you would like to appoint someone to give or refuse consent to life sustaining treatment on your behalf, then you should prepare a health and welfare LPA.

When can my Attorney act for me?

The Mental Capacity Act 2005 has ensured that there are further levels of protection in place for the donor of an LPA.

Your attorney will only be able to act for you once the LPA has been signed, and then certified by an independent person to confirm that you understand the document and have not been pressured into signing it. It will then have to be registered with the Office of the Public Guardian before your attorney can use it.

A property and financial affairs LPA can be registered and used while you still have capacity, although you can restrict it so that it will only take effect if you lack capacity. In the same way, a health and welfare LPA can be registered while you still have capacity, but it can only be used by your attorneys if you lack mental capacity.

What will it cost me?

The Office of the Public Guardian will charge £110 to register each LPA.

The length of the document, together with the requirement for a certificate provider and registration prior to use makes LPAs more complicated to complete than EPAs were.

For more detailed costs information, please contact us to discuss your particular requirements.

Do I need to change my EPA?

Any EPAs prepared before 1st October 2007 will remain valid, and, provided you are satisfied with the documents still, will not require any amendment.

If you want to appoint new attorneys to deal with your property and financial affairs, then you cannot amend your existing EPA, you will need to prepare a property and financial affairs LPA.

If you want to appoint an attorney to deal with health and welfare decisions on your behalf, then even if you have a valid EPA you will need to prepare a health and welfare LPA.

For further information please get in touch with [Sofia Tayton](#) on 01789 293259 (Stratford office), [Emma Vaqueiro](#) on 01564 735561 (Henley office) or [Natalie Smith](#) on 01242 229086 (Cheltenham office), or your usual Lodders contact.

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