



# LASTING POWER OF ATTORNEY



by Carolyn Spring

## WHAT IS A LASTING POWER OF ATTORNEY (LPA)?

A Lasting Power of Attorney is a legal document that is sealed by the Court of Protection. It allows you to appoint one or more people (your 'attorneys') to make certain decisions on your behalf if you lose mental capacity.

## WHO IS A LASTING POWER OF ATTORNEY FOR?

To make an LPA you must:

- be over the age of 18
- have the mental capacity to make the decision to have an LPA
- have someone sign to say that you have the mental capacity to make an LPA – this can be a professional such as a doctor, social worker or solicitor, or someone who has known you for

more than 2 years and is independent and will not benefit from the LPA

- have one or more people who are willing to act as your 'attorney'
- have one or more people who are willing to be informed of your decision to register a LPA and can object or raise concerns to the Office of the Public Guardian – this is a safeguard to ensure that you are not being coerced into it.

## WHAT MIGHT HAPPEN IF I DON'T HAVE AN LPA?

If you don't have an LPA, many decisions will be taken on your behalf either by medical professionals or your next of kin or relatives. In situations where you have a domestically violent partner or spouse, or abusive parents, this could put you in a very worrying situation. A Lasting



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Power of Attorney gives you security in this kind of situation, for example if you have a stroke or enter a coma. It would mean that your 'attorneys' are entitled to make decisions about you regarding your care (such as ongoing life support) and can receive information about you, and abusive family members or partners will be prevented from doing so. Your 'attorneys' can only make the kinds of decisions that you stipulate in your LPA. The Court of Protection might intervene in some situations and appoint a 'deputy', but you will not have power over who that person might be.

## WHY MAKE AN LPA?

- it ensures that the people you have chosen can make decisions on your behalf, rather than strangers or abusive family members
- it allows you to stipulate the kind of care and treatment that you wish to receive, so your wishes are more likely to be followed
- it makes it easier for the people around you to be able to act on your behalf and know what decisions you would want them to make

## WHAT WOULD MY ATTORNEYS DO?

- they must follow your instructions as written on the LPA, but you cannot instruct them to do anything illegal
- they must follow the Mental Capacity Act Code of Practice

- they must make sure you are allowed to make as many decisions for yourself as you can
- they must make sure that any decisions they make are in your best interests
- they must not take advantage of their position, and only make decisions which benefit you
- they must not let other people make decisions, unless they have the right to do so, such as a doctor
- they must respect your privacy
- they must follow any directions given by the Court of Protection
- they must not give up the role without first telling you and the Court

## WHAT DOES AN LPA COVER?

There are two types of LPA:

### 1. HEALTH AND WELFARE

This covers areas such as your daily routine, for example washing, dressing and eating, your medical care, and life-sustaining treatment. This will only come into effect once you lose mental capacity.

### 2. PROPERTY AND FINANCIAL AFFAIRS.

This covers areas such as managing a bank account, paying bills, collecting benefits and selling property. This can come into effect while you still have mental capacity if you so desire.



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You can register one or both. The attorneys you appoint can be the same or different on each one.

## HOW DO I MAKE AN LPA?

1. Choose your attorney(s). Fill in the forms to appoint your attorneys and specify your instructions. The forms can be found at <https://www.gov.uk/power-of-attorney>. You can also instruct a

solicitor to do it for you, but this is more expensive.

2. Register your LPA with the Office of the Public Guardian, which can take up to 10 weeks and costs £110 per LPA, unless you are entitled to a reduction due to income.

An example Advance Statement can be found at [www.carolynspring.com/erg-downloads/](http://www.carolynspring.com/erg-downloads/)

