



# LPA - Getting started

## Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) allows you (the donor) to choose someone (the attorney) to make decisions on your behalf. Your attorney(s) can only use a completed LPA after it has been registered with the Office of the Public Guardian.

### What you need to do to complete an LPA

- » Decide who to appoint as your attorney(s) in the LPA
- » Decide if you want to appoint a replacement attorney in case your original attorney(s) cannot act for you
- » Decide whether you want anyone to be notified when an application is made to register your LPA and, if you do, who do you want to be notified

### Choosing your Attorney

Your attorney should be a person that you know and trust, who is at least 18 or a trust corporation. Your attorney must not be an undischarged or interim bankrupt. You can choose more than one attorney.

### Choosing more than one Attorney

If you choose more than one attorney you must decide whether your attorneys should act together or act together and independently (that is, they can all act together but they can also act separately if they wish). You may appoint your attorneys together in respect of some matters and together and independently in respect of others.

If you appoint more than one attorney and do not state whether they are appointed together or together and independently, when your LPA is registered they will be treated on the basis that they are appointed together.

In a Lasting Power of Attorney 'together' means jointly and 'together and independently' means jointly and severally for the purposes of the Mental Capacity Act 2005.

### Choosing a replacement Attorney

You can name a replacement(s) in case an attorney is unable or no longer wishes to continue acting for you. Your attorney(s) can change their mind and may not want to act for you. If this is the case, they must tell both you and the Office of the Public Guardian.

### When an Attorney can act

Once your LPA is registered, your attorney(s) can act before you lack capacity (with a Property & Affairs LPA) or after you lack capacity (both Property & Affairs and Health and Welfare LPAs). You may restrict your attorney(s) to act only when you lack capacity by stating this in your LPA.

There is no one point at which you are treated as having lost capacity to manage property and affairs. Your attorney(s) must help you to make as many of your own decisions as you can. When decisions have to be taken for you, your attorney(s) must always act in your best interests.



## Decisions your Attorney can make for you

An attorney for property and affairs may make any decision that you could make about your property and affairs, eg buy or sell a property, manage investments or carry on a business, and may access personal information.

Some decisions will also involve personal welfare matters, such as a move to residential care. Your property and affairs attorney(s) will then need to consider your best interests with your attorney(s) for personal welfare (if you have one)

Your attorney(s) cannot do whatever they like. They must follow the principles of the Mental Capacity Act 2005 which are:

- » A person must be assumed to have capacity unless it is established that a person lacks capacity.
- » A person is not to be treated as unable to make a decision unless all practical steps to help a person to do so have been taken without success.
- » A person is not to be treated as unable to make a decision merely because the person makes an unwise decision.
- » An act done, or decision made, under the Mental Capacity Act for or on behalf of a person who lacks capacity must be done, or made, in the persons best interests and before the act is done, or the decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the persons rights and freedom of action.

Guidance about the principles is in the Mental Capacity Act 2005 Code of Practice. Your attorney(s) will have a duty to have regard to the code. Copies of the Code can be obtained from Her Majesty's Stationary Office.

## Restricting the powers of your Attorney or adding conditions

You can put legally binding restrictions and conditions on your attorney(s) powers and the scope of their authority in the LPA. These decisions, however, may still need to be made and other people will have to decide for you. That could involve going to the Court of Protection and a decision being made in your best interests.

## Giving guidance to your Attorney

You can also give guidance to your attorney(s) in your LPA. This is not legally binding but should be taken into account when they are making decisions for you.

## Paying Attorneys

An attorney is entitled to be reimbursed for out-of-pocket expenses incurred in carrying out their duties. Professional attorneys, such as solicitors or accountants, charge for their services. You should discuss and record any decision you make about paying your attorney(s) in the LPA



## Notifying other people before registration

You can name up to five people to be notified when an application to register your LPA is made. Anyone about to apply for registration of an LPA must notify these people. This gives you an important safeguard because, if you lack capacity at the time of registration, you will be relying on these people to raise any concerns they may have about the application to register.

## Registering the Lasting Power of Attorney

Your LPA cannot be used until it has been registered with the Office of the Public Guardian (OPG). Either you or your chosen attorney(s) can apply to register the LPA. If you register it immediately it can be used straightaway unless you have specified that it should only be used when you lack capacity (Property & Affairs LPA).

The form for registering the LPA is available from the OPG together with details of the registration fee payable. Currently the fee for registering each LPA is £110.

## Register of Lasting Power of Attorneys

There is a register of LPAs kept by the OPG. It is possible to access the register of LPAs but access is controlled. On application to the OPG, and payment of a fee, people can find out basic information about your LPA. At the discretion of the OPG and according to the purpose for which they need it, they may be able to find out further information. There is additional guidance available from the OPG on the register.

## Changing your mind

You can cancel your LPA even after it is registered if you have the mental capacity to do so. You need to take formal steps to revoke the LPA. You must tell your attorney if you do and, if it is registered, you will need to ask the OPG to remove it from the formal register of LPAs.

*The information contained in this factsheet is based on our understanding of the working of the Court of Protection and the Office of the Public Guardian. Any rates, costs or timescales outside of Gemini Estate Planning's in-house services (such as the cost or time required for registering a Lasting Power of Attorney) are estimates and are therefore subject to change.*