

Guidance note



Lasting Powers of Attorney

Vine Law LLP
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Introduction

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a legal document which gives another person(s) (your Attorney) authority to make decisions for you if you are unable to do so for yourself i.e., if you lack mental capacity.

There are two types of LPA

- Financial; and
- Health and Welfare



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Financial LPA

A financial LPA allows your Attorney to deal with your financial affairs.

This might include things like:

- Paying your bills
- Looking after your bank account/s
- Dealing with your bank, accountant or financial advisor
- Selling your house
- Buying a new house for you
- Investing your money



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Health & Welfare LPA

This LPA allows your Attorney to make decisions about your day-to-day activities, where you live, medical treatment and what care you receive. If you choose to, your Attorney can also make decisions about life sustaining treatment for you.

This Guidance will explain when and how your Attorney might make decisions for you, what provisions are in place to protect you and what you will want to consider before making an LPA.



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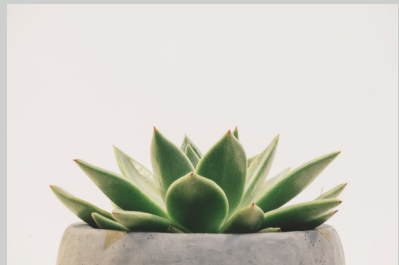
Who can I appoint as Attorney?

You might want to appoint:

- Family members
- Friends
- Professional Advisors such as a solicitor or an accountant

You should also consider practical issues such as:

- If you need someone that is geographically close to you?
- Does your intended attorney have enough time, the appropriate skills and expertise to carry out their duties properly?
- If you appoint more than one Attorney, would they be able to work together?
- If you appoint a professional Attorney how much would they charge you?



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When Can My Attorney Decide for Me?

An Attorney can only act on your behalf when an LPA has been registered with the Office of the Public Guardian. (See Below - How am I Protected?).

When registered the two types of LPA work in different ways.

Financial LPA

When it is registered, this can be used by your Attorney with your permission, even if you have not lost mental capacity. For example, it can be useful if you are out of the country or in hospital etc.

Health and Welfare LPA

Your Attorney will only ever be able to make a decision for you using this power if you lack mental capacity.

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Appointing more than one Attorney

If you want to appoint more than one Attorney, you must decide how they might make decisions for you.

Jointly

If your attorneys are appointed jointly, they can only make decisions together. This might prove inconvenient when it comes to day- to-day decisions. Your LPA will be terminated if one Attorney cannot continue to act for you (unless you appoint a replacement – see below).

Jointly & Severally

This means your Attorneys can make decisions together or independently. This is a more flexible option. If one Attorney cannot continue to act the remaining ones can.

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Appointing more than one Attorney

Jointly For Some Decisions & Severally For Others

This combines the two options above. It might give you flexibility by allowing Attorneys to act individually for day-to-day decisions but require joint decisions to be made in relation to more serious or complex matters.

You can also appoint replacement Attorneys to act for you if any one or more of our first choice Attorneys cannot continue to act for you.



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What powers do my Attorneys have?

Legal Restrictions

The law imposes limits on what your Attorney can do and how they must act. There is a Code of Conduct that they must follow when making decisions for you.

Some examples of rules imposed on your Attorney are:

- They must always act in your best interest
- They cannot make gifts of money on your behalf except in very limited circumstances e.g., birthdays and Christmas
- Your Attorney cannot break any laws relating to assisted suicide or euthanasia
- They cannot stop you making your own decisions just because they think you are making an unwise decision



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What powers do my Attorneys have?

Instructions

You can impose limits on your Attorney's powers or insist they act in a certain way by giving them instructions in your LPA.

Example 1. You might instruct an Attorney for Finance to appoint an investment manager to make decisions about your investments.

Example 2. You might instruct an Attorney for Health and Welfare to seek confirmation from a doctor that you cannot live independently before arranging care for you.

Preferences

You can provide advice to your Attorney in your LPA. These are called Preferences.

This advice is not binding on your Attorney but provides them with useful guidance and makes them aware of your wishes. For example, you might state a preference to live in a particular geographical area.

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How am I Protected?

The process of creating an LPA includes a number of safeguards designed to protect you.

One is the need for a "Certificate Provider."

Every LPA you make will need to be signed by a Certificate Provider. A Certificate Provider is an impartial person qualified either as:

- A professional (e.g., a lawyer or GP)
- Someone that has known you for at least two years

They are independent and cannot be one of your Attorneys.

The role of the Certificate Provider is to talk to you about your LPA to ensure you understand it, you're not under pressure to sign it, and no fraud has been committed in making the LPA.

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How am I Protected?

- People to Notify – You can, although you do not have to, notify up to five other people that you've made an LPA and that you are having it registered. This allows those people to raise any concerns they have at the point of registration.
- Registration – You or your Attorney can register your LPA with the OPG at any time. Your Attorney can only make decisions for you when the LPA is registered. You will need to decide whether you want to register your LPA as soon as it has been signed.
- Cancellation – You can cancel your LPA at any time while you have the capacity to do so.



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Process

At Vine Law we can advise you on all aspects of creating and registering your LPAs and we offer a range of pricing options based on your needs. The process generally involves the following steps:

1. We will meet with you to discuss your LPAs and advise you on their provisions.
2. We prepare Drafts of your LPAs for you to check.
3. We will arrange for you and your Attorneys to sign the LPAs.
4. We send the LPAs to the Office of the Public Guardian to be registered.
5. After registration, we send you copies of your LPAs whilst retaining the originals for safe keeping.

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Further Help

If you'd like more information about Lasting Powers of Attorney, please contact Cath Collins.

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