



**A F F I N I T Y**

# **WHY SHOULD I MAKE A LASTING POWER OF ATTORNEY?**

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## Why should I make a Lasting Power of Attorney?

Actually, this question should be “Why should I make a Lasting Power of Attorney (Property and Affairs) and the answer is far more straightforward than the question:-

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

In the above statement, looking after ‘**them**’ (your property and assets and associated affairs) is done by making a document called a *Lasting Power of Attorney – Property & Financial Affairs* (an ‘LPA-PA’).

### Lasting Power of Attorney – Property and Affairs ('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 12 months** and cost up to **£2,000 to process** – during which time your finances could be seriously compromised – 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 instruct this firm to create and print the LPA-PA, you then 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. (This firm’s representatives are authorised to be a certificate provider)
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, usually with your Will.
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***

An LPA-PA is a bit like a normal Power of Attorney, except that it continues if you become mentally incapacitated (a 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 (‘Jointly’) or whether they can act separately (‘Jointly & Severally’) 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 or you can ask a representative from this firm as we are authorised to be a professional certificate provider.

**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.

**Finally**, please note that, just like a Will, an LPA-PA created this way 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 this one.

## ***What you CANNOT do with an LPA-PA or an Enduring Power of Attorney (EPA)***

There are a number of things that your Attorneys CANNOT do with an LPA-PA or an EPA, but they CAN do with a different form of LPA. This is called a Lasting Power of Attorney – Health & Welfare (LPA-HW)

### **These things include:**

- Decision making power relating to where you live. This could include which care home you stay in, if ever long-term care is a requirement or whether you stay in your own home or with a family member.
- The power to make decisions about what medication you take, including prescriptive and pain-relieving drugs
- The power to make decisions about your medical treatment, such as minor or major surgery
- The power to make decisions on what you do (and don't) eat
- Deciding what clothes you wear
- Making decisions on your travel arrangements. This would include where you go on holiday and who with, including whether you are fit enough, in your attorneys opinion, to fly
- You can give your attorneys the power to make decisions as to whether your life is sustained if on life support. This power is optional within the LPA-HW document

## ***How to make an LPA-PA***

***Call Dan Attfield on 01245 850000 or 0800 731 3071 and we will arrange a convenient meeting and arrange everything for you and take your instructions and guide you through the whole process.***