

LASTING POWER OF ATTORNEY



WHAT IS A LASTING POWER OF ATTORNEY?

A Lasting Power of Attorney (“LPA”) is a document where you give another person or people of your choice power to make decisions on your behalf.

You can make an LPA in relation to your Financial Property and Affairs and/or an LPA in relation to your Health and Welfare. They are separate forms and you must complete both if you wish to make both powers.

WHY CAN'T MY NEXT OF KIN JUST MAKE DECISIONS FOR ME?

The phrase “next of kin” is common but does not actually have any legal meaning. The only person able to manage your finances if you lose capacity to do so for yourself is an Attorney that you have appointed under an LPA or a Deputy appointed by the Court of Protection.

WHAT IS 'INCAPACITY'?

Incapacity is where a person lacks capacity to make certain decisions for themselves. You may have capacity to make some decisions but not others. Mental incapacity might be brought about for example by short term memory loss, Alzheimer's, dementia, a coma or other illnesses.

WHAT IS AN ATTORNEY?

Your Attorney or Attorneys are the people you choose to make decisions on your behalf. You can also appoint replacement Attorneys if your original Attorneys can no longer act, for example, if they have died, are mentally incapable or bankrupt.

Anyone of your choice can act as Attorney, providing they are over eighteen and not an undischarged or interim bankrupt. The person or people you choose should be absolutely trustworthy and possess appropriate skills to make decisions on your behalf.

You can appoint more than one Attorney and you can choose if they are to act jointly or together or separately. If you do not have any close friends or family members, a partner of Wilson Browne Solicitors would be willing and able to do so, supported by our specialist team.

ARE THERE ANY SAFEGUARDS IN PLACE?

Yes. The Lasting Power of Attorney cannot be used until it is registered at the Office of the Public Guardian. By registering the document the Office of the Public Guardian are aware of its existence and therefore can investigate any misuse if alerted.

Also, you may choose to notify someone that you are applying to register your LPA. They can object to the registration if they think that there is some reason that the LPA should not be validated.

You must also have a Certificate Provider who will certify that you understand the legal nature and consequences of the form and that you are not under any undue influence or duress as well as confirming that you have the necessary mental capacity to enter into it. Wilson Browne can act as your Certificate Provider.

CAN I PUT RESTRICTIONS ON THE POWER MY ATTORNEYS HAS?

Your Attorney must follow the principles of the Mental Capacity Act 2005 and have regard to the code of conduct. Above all they are only allowed to make decisions in your best interest. You can add restrictions or conditions to your LPA which are legally binding. You can also add preferences (which are not legally binding) to assist your Attorney on how you want things done. Your adviser can discuss and draft these clauses for you.



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CAN I CHANGE MY MIND?

Even if the LPA has been registered you can revoke the LPA by entering into a Deed of Revocation. However, you must have mental capacity to do so.

HOW MUCH WILL IT COST?

Wilson Browne Solicitors have a fixed cost regime for the preparation of the Lasting Power of Attorney, acting as Certificate Provider and registration. There is a registration fee to pay to the Office of the Public Guardian which is currently £82. However, in certain circumstances you may be entitled to an exemption or remission of this registration fee. Your adviser can discuss this with you and, if relevant, make the application on your behalf.

WHY SHOULD I MAKE AN LPA NOW?

At present it takes approximately 3 to 4 months to register an LPA. It is therefore important that you do not wait until you need help under an LPA. There is no mechanism to speed up this process.




If you need help in the future and you don't have an LPA the process is determined by the Court, which can be onerous, expensive and time consuming.

OTHER THINGS TO CONSIDER

No one likes to think about death. However, taking steps to plan for what will happen to your estate when you die will lessen the burden on family. You can prevent unnecessary problems and potentially save your estate money by making a Will that reflects your wishes and financial circumstances.

We strongly recommend seeking professional advice before making a Will. For more information please contact your local office or email us at the address below.

- “ I thought the service was highly professional and efficient and would recommend others to use Vicki. ”
- “ The service we were offered by Vicki was first class. She is a highly efficient and pleasant professional who put us at our ease from the start and I can't speak too highly of her and her approach to our request. ”
- “ May I again offer my sincere thanks for all your hard work. It would have been impossible for me or any relative to have dealt with my brothers' probate ourselves, and throughout, Wilson Browne have done their utmost to reduce for the stress for what has been a very distressing time. Thank you. ”
- “ I am very happy with your service and would certainly recommend your firm to others. ”
- “ Thank you for your courtesy and efficiency in the way you have dealt with my original instructions. You set my mind completely at ease. I also thank all the staff with whom I have been in contact over this period. Everyone has been really helpful and all this is very much appreciated. ”
- “ We are impressed by Vicki Pearce (and her team), she was ideal...excellent! ”

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company/wilson-browne-solicitors 
wilsonbrownelaw 

enquiries@wilsonbrowne.co.uk 0800 088 6004 wilsonbrowne.co.uk

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