



WILLS TAX &
TRUSTS LTD

Why Everyone Should Have a Lasting Power of Attorney



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This guide is intended to tell you more about how a **Lasting Power of Attorney** works and covers the main points you will want to know.

However, it does not address all the details. We recommend you should seek advice and help from us to investigate this further and make suitable arrangements, before taking any action.

Introduction

Imagine that you are unable to make decisions due to a serious accident, an illness, or injury, and consider how that might affect the fabric of your life and your family's well-being.

It is at moments like this that you want a guardian angel to step in and wave a magic wand. In the real world that clearly will not happen, but you can arrange for your trusted relatives and friends to take the place of a guardian angel and act as your **Attorney**.

An Attorney will be able to assist you to make decisions if you are confused, and if necessary, they can take decisions on your behalf. They will be allowed to access your bank account, and other financial accounts, so they can pay bills and keep your financial arrangements in order.

To enable them to do so they will require a legally binding document called a Lasting Power of Attorney (LPA).



What Exactly is an LPA?

An LPA is a form of Power of Attorney which enables one individual to give another individual the right to take control of their affairs.

- The individual who puts the LPA in place is known as **the donor**.
- The individual who can act on your is known as **the Attorney**.
- The donor can only set up and instigate an LPA **when they can understand what they are doing**.
- In simple terms, this means that the donor understands what they are signing and what ramifications there are in giving control to others.
- And not at a time when they have lost this cognitive ability.

What is “Mental Capacity”?

It is defined as being able to make decisions for yourself. If you cannot, then you lack capacity. This can be caused by many reasons, such as mental illness, dementia, injury, or a learning disability.

To have capacity an individual must be able to:

- Understand information given to them about a decision they need to or want to make.
- Remember the information for long enough to be able to make the decision.
- Weigh up all the options available relating to the decision.
- Communicate their decision in any way they can, including through speech, sign language or gestures.

Life is full of surprises, accidents or illness can happen at any age, so it is worth making these arrangements when you are fit and well and **do not** need them.

The forms are designed to be filled in online, but we find that most clients do not want a one size fits all solution; they prefer to receive guidance in order that any documentation fits their unique circumstances.

Bespoke LPAs combined with letters of guidance form a powerful part of the circle of protection that a family needs to safeguard assets, particularly when combined with modern integrated Wills and Trusts.

What Does the LPA Allow an Attorney to do?

There are two types of LPA (see next section), the examples below indicate what role an Attorney has, in each case.

The Attorney takes on responsibility for the affairs of the donor and this allows them to:

- Conduct all the financial aspects relating to bills, property, and tax.
- Manage all health aspects – including such things as their accommodation, care, medical needs, and daily routine.

The wording in the LPA document may clarify or restrict this further. For example, in relation to health and medical needs the donor may stipulate certain instructions around treatment, resuscitation and other preferences, including personal care.

An Attorney must act in the donor's best interests.

The Two Types of LPA

Property & Financial Affairs LPA

A Property and Financial Affairs LPA deals with the donor's finances and all matters relating to their assets and property.

This can cover managing their bank accounts, investments, insurances, and pensions.

Health and Welfare LPA

A Health and Welfare LPA can be very wide ranging in scope and will cover such things as where the donor lives, their day-to-day routine, including contact with other people, what food they are given and their medical treatments.

The duties covered by the two different LPAs can often overlap. A good example is when care must be considered, not only will the health needs be relevant, but the financial consequences of funding care must be considered, and payments organised.

WE would always recommend that both types of LPA should be put in place. Although you might choose different Attorneys for each arrangement.

Do give some consideration to your Attorneys; providing proper guidance and informing them about existing advisers is a good start. Ensuring that they are aware of good practice and the necessity of acting in accordance with the Trustee Act 2000 is also useful.

The role of Attorney can be onerous – do make sure that they are compensated for the time they spend assisting you and family.

Registering an LPA

An LPA must be registered with the Office of the Public Guardian, otherwise the Attorney cannot act or make decisions on the donor's behalf.

Ensure you distribute legally effective and authorised copies to your Attorneys.

If possible, arrange a meeting with your Attorneys to ensure they are happy to help.

When Can an Attorney Start to Act?

Assuming the LPA has been registered, then in the case of a Health and Welfare LPA, the Attorney can only act when the donor loses capacity.

In the case of a Property and Financial Affairs LPA, you can arrange for the Attorneys act from the date that the LPA is registered.



Variations between England, Scotland, Wales, and Northern Ireland

Most of the principles we outline in this document are consistent across all four countries.

However, in Scotland and Northern Ireland there are some variations which make the technical nature different, and their legal framework is different to England and Wales.

In Scotland there is a Continuing Power of Attorney to cater for financial decisions and a Welfare Power of Attorney for health and care decisions.

In Northern Ireland there is an Enduring Power of Attorney which covers both financial and health matters in the one document.

Some Common Questions About LPAs

Q. "Is an LPA the same as an Enduring Power of Attorney (EPA)?"

No. LPAs replaced the previous Enduring Power of Attorney (EPA) system.

If an EPA was set up before 1 October 2007 it will still be valid, even if it has not been registered, though they must be registered when the donor loses capacity.

An EPA does not provide the same level of protection as an LPA. If you have an EPA, it may be an idea to consider whether to replace it with an LPA.

Q. "And what about an Ordinary Power of Attorney, how is this different?"

These are valid or relevant when you have capacity and are typically used in situations when you want someone to act for you for a short period, but only in respect of your financial affairs. This could be useful if you are going into hospital for a period and need someone to deal with your bills or travelling overseas for a prolonged period and need your financial affairs managed over a fixed time period.

Q. "Who can be my Attorney?"

The Attorney needs to be a capable adult, they cannot be an undischarged bankrupt, nor can they be involved (e.g. as an owner or employee) of a care home in which the donor is resident.

Attorneys can be a relative and they can also be a beneficiary of the donor's Will.

Q. "Can I have more than one Attorney?"

Yes. If you do have more than one, then you need to decide, and the document needs to make clear if the Attorneys are able to act independently in some instances or whether they must always act jointly. You can have as many Attorneys as you like.

Q. "Will an LPA still be valid on the donor's death?"

No, once the donor dies the LPA is no longer valid.

Q. “What happens if my Attorney becomes incapacitated or dies before they can act for me?”

This depends on whether you have more than one Attorney appointed and the terms upon which you have appointed them. If there is more than one and you have stipulated they must act jointly either for all decisions or even some decisions, then they are considered ‘one unit’ and clearly if one cannot fulfil their duties the LPA has to end and a new one arranged.

If you have more than one Attorney and they can make decisions individually, then the surviving Attorney(s) can continue to act.

If you have just one Attorney and you have included in your document details of a **Replacement Attorney** (an option which is often included) then the Replacement Attorney can take over.

If you have just one Attorney and no replacement provision, the LPA will end, and you will need to arrange a new one.

Q. “What fees and costs are there for registering an LPA?”

The fees vary - in England and Wales, the fee is £82, in Scotland it is £79 and in Northern Ireland £151. This is a fee applicable to each LPA or equivalent. There are reductions for those earning less than £12,000 per year and exemptions for those on benefits. These figures are correct as of October 2020.

Q. “How does an LPA interact with other documents or instructions, such as a Will?”

Both documents are important.

A Will dictates what you would like to happen to your assets and possessions when you die, and in terms of your legacy wishes.

The LPA is there to cater for your needs in your lifetime, but it still protects family members who could face great challenges if you do become incapable of making decisions for yourself.

So, one is giving instructions for your lifetime, the other for after you have gone.

There may well be other questions you have. It is also worth noting that the laws relating to LPAs are extensive, so considering and organising an LPA is always best done with an expert to help you.

Getting Help and Advice.

It is entirely feasible to arrange your own LPA and to obtain the relevant forms and documents from multiple sources. However, there are very good reasons why it may be a better idea to get professional advice:

1. Although on the surface putting an LPA in place is relatively straightforward, there are many subtle, but highly relevant, aspects to this where it is easy to trip up and end up in a position, maybe many years later, where your intended outcomes are not as you wanted them.
2. Similarly, the LPA is a legal document and there are several legal factors relating to the whole process of sorting an LPA which need to be carefully considered.
3. Putting an LPA in place, however sensible this is, is unlikely – on its own- to cover all your requirements or to protect all that you want to protect.

You will want to make sure your LPA works alongside the wording and instructions in your Will, that it dovetails with your planning towards possible future care fees, your intended legacy wishes, and your general financial planning.

The LPA should be co-ordinated to work with and alongside these other important aspects of future planning and protection measures.

In this respect arranging an LPA is part of wider picture - a very important part -and one that should be considered as such. Working with a professional who can help you with this overall view of your future requirements, makes perfect sense.

In Conclusion

Arranging an LPA is something which works for everyone.

Clearly, the need comes into focus later in life and this is understandable. But really, anyone - at any time - should be looking at what would happen if they were to lose mental capacity.

There are some aspects of planning which may not be appropriate for all individuals. For example, not everyone wants or needs Inheritance Tax Planning.

Everyone should have an LPA.

So, please take advice and look at this as soon as you can.

Who We Are

Our goal at Wills, Tax & Trusts Ltd is to protect and enhance your legacy.

Our hardworking staff carefully develops plans to protect your money and preserve the legacy of your family.

Speak with us right now to learn how we can support you.

Investment Planning

Investment and pension portfolios should be organised in an understandable manner, so having a clear Investment Policy Statement is not only good practice for you, but also allows for better control of your investments by a third party (such as your (LPA) Attorney).

Inheritance Tax Planning

Inheritance tax planning is normally carried out over several years, ensure that you provide documented proof of the steps you have taken, together with any advisory reports.

Retain lists of recipients, dates, and amounts of any gifts which have been made.

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