

Information Sheet: Lasting Powers of Attorney

This note has been prepared for those who would like to know more about Powers of Attorney.

Powers of Attorney have been in existence for many years. By using a Power of Attorney, a person (the Donor) gives authority to someone else (the Attorney) to act on his or her behalf and manage his or her affairs. Although a Power of Attorney can be limited to some specific matter, for example to sign a Conveyance while the Donor is abroad, it has always been more usual to give the Attorney the widest powers over the Donor's affairs.

However, a General Power of Attorney does not cover mental incapacity, and once the Donor becomes mentally incapable then the Attorney can no longer act. This means that an application has to be made to the Courts to be officially appointed to look after that person's financial affairs. This results in delays, expense and often distress, as well as the continuous involvement of the Court of Protection thereafter.

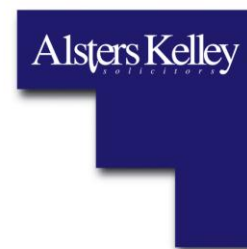
Against this background, Enduring Powers of Attorney were introduced. However, from the 1st October 2007, Enduring Powers of Attorney were replaced by a different power, called a Lasting Power of Attorney. It is a similar type of document but can extend an Attorneys authority from financial matters, to include health and welfare matters, thus increasing the scope of Powers of Attorney.

What is a Lasting Power of Attorney?

An LPA is a legal document which allows you to appoint one or more people that you trust to deal with your finances and property on your behalf. The document can only be used when registered with the Office of the Public Guardian. There are two types of LPA, firstly a Property and Affairs LPA which deals with the appointment of an Attorney to look after your financial affairs. Secondly, a separate Personal Welfare LPA, which allows you to appoint an Attorney to make decisions about your personal welfare including health and care decisions. This note primarily deals with the Property and Affairs LPA. Information on the Personal Welfare LPA can be obtained on request.

What is the objective a Lasting Power of Attorney?

The objective of the LPA is to enable you to plan and decide who you would like to deal with your affairs, either in consultation with you should you still have capacity or on your behalf and in your best interests should you not have capacity, through reasons of ill health or accident. Most people put in place an LPA in the hope that they are never needed. If they are needed then they can be used easily subject to any registration formalities referred to below. However, sometimes due to circumstances the LPA will need to be used immediately and we can assist in making sure this is facilitated.



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How do I put in place an LPA?

As an LPA is a very powerful document it is very important that you take proper legal advice before executing the document. Here at Alsters Kelley we will be able draw up the document to your specific requirements. We will make sure that you are fully aware of the effects of the document.

The LPA will cover all of your assets and property in England and Wales.

We can also be the Authorised Certificate Provider that is necessary to complete a specific part of the form to make it legally valid.

Who should I choose to be my Attorney?

This is a very important decision and you must choose one or more people that you do trust. It is important to remember that while you still have capacity you do not lose any of the decision-making powers which you have and your Attorney must consult with you before making any decisions on your behalf.

You should make sure that whoever you choose is happy to take on the role. You can appoint a spouse, partner or civil partner, children or any other family member or close friend. You can even choose a professional if you wish.

Can I appoint more than one Attorney?

Yes, more than one can be appointed Together, which means all actions are taken jointly or Together and Independently, which means they can act on their own and they can act together. You can also be more specific and appoint your Attorneys to act Together in respect of certain issues and Together and Independently in respect of others. It is possible to appoint a substitute Attorney should one be unable to act.

We normally suggest Together and Independently is the most appropriate appointment because if one of your Attorneys becomes ill, dies or lacks capacity to act the LPA will still continue and the remaining Attorneys can continue to act.

Should the authority of the Attorney be limited?

Including restrictions and conditions needs to be considered very carefully to ensure that the LPA can continue to be used effectively. Any onerous restrictions and conditions may lead to the OPG considering the matter, and considering the cancellation of the restriction or condition. We can advice you on the need for such.



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Registration of your LPA

The Property and Affairs LPA can only be used once registered. You or your Attorneys can register your LPA and the named persons will be notified. The benefit of registering the LPA shortly after it has been executed is that it can then be used by your Attorneys immediately following the registration formalities. However, you may decide to postpone the registration.

Only you or the named persons or another Attorney can object to the registration of an LPA. Information on the reasons for objections can be obtained when dealing with an application to register your LPA.

What action is needed now?

If you feel that you would like to have Lasting Power of Attorney, please let us know and we will prepare the document for you, which is simple and straightforward. We would need to know:

- Your full names, address and date of birth;
- The full names and address(es) of the proposed Attorney(s). If it helps you, you may appoint named partners at Alsters Kelley to act as your Attorney or Attorneys, but in such a case the Lasting Power of Attorney will have to give the Attorney the authority to charge for his or her work.
- Names and addresses of at least one and no more than five people to be informed, should the LPA need to be registered.

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.