Renaissance Legal

Guide to Lasting Power of Attorney

A Lasting Power of Attorney (LPA) is a legal document in which you give authority to another person (known as an 'Attorney') to make certain decisions on your behalf.

The Attorney will have the authority to make decisions about matters such as your property and financial affairs or health and welfare at such time as you wish them to or you lack the mental capacity to do so.

There are two types of LPAs that can be created:

1. Property and Financial Affairs LPA

This document allows your Attorney to deal with your property and finances. The Property and Financial Affairs Lasting Power of Attorney can be used when the Donor* has capacity to act, as well as when the Donor lacks mental capacity. For example, it may be easier for you to give someone the power to carry out tasks such as paying your bills or collecting your benefits or other income. They could also deal with larger decisions such as the sale of your home or arranging your investments.

**The person granting power to act on their behalf*

Helpful Definitions

Who can make an LPA?

Anyone aged 18 or over, with the capacity to do so, can make an LPA appointing one or more Attorneys to make decisions on their behalf. You cannot make an LPA jointly with another person.

What we will do for you?

We will discuss with you the two types of LPA and how they can be set up to meet your needs. We will then create the documents for you, make sure it is completed and if necessary, deal with the certificate and registration.

We can also act as an Attorney regarding property and financial affairs if you would like us to.

Please see the Attorney and Deputyship Services page on our website for more information on choosing us to act for you.

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There may be occasions when you are unable to deal with your own affairs due to a period in hospital or a trip out of the country and the Property and Financial Affairs LPA can be used by your Attorney during these short periods.

2. Health and Welfare LPA

You can give your Attorney the authority to make decisions on matters such as where you should live and the day to day care you should receive. You can give your Attorney wide powers to make decisions which could include decisions relating to giving or refusing consent to particular types of health care and medical treatment.

You can expressly give your Attorney the power to make decisions about life-sustaining treatment. These decisions can, however, only be taken by your Attorney when you lack the capacity to make them for yourself; for example if you are unconscious or because of the onset of a condition, such as dementia.

Choosing your Attorney

You can choose anyone you trust to act as your Attorney, provided they are over 18 and not bankrupt when they sign the form (in relation to the Property and Financial Affairs Lasting Power of Attorney). You can appoint more than one person to act. You can also appoint replacement Attorneys.

If you appoint more than one person, you can choose whether they can act together or independently. You can also state that your Attorneys must act together for some decisions but for others they can act independently.

By acting together, your Attorneys have to all sign everything. If acting together and independently, your Attorneys can all sign everything or they can go off and sign separately if needed. If your Attorneys act together and one of them can no longer act, the remaining Attorney(s) can no longer act.

Your Attorneys must follow the principles set out in the Mental Capacity Act when they are making decisions or acting on your behalf. They must always act in your best interests and consider your needs and wishes as far as possible.

It is important that your Attorneys are trustworthy and have the appropriate skills to make decisions on your behalf. You will be trusting them with high level decision making so it is important to think carefully about who your Attorneys will be.

So what is the process?

You start by completing the relevant LPA form appointing your Attorneys and deciding what they can and cannot do. That has to be signed by you and the Attorney(s). A certificate also has to be completed by someone confirming that you understand what you are signing and that there is no reason why the LPA should not be created. The LPA has to be registered with the Office of the Public Guardian before the Attorney(s) can act. An LPA can be created but not registered with the Office of the Public Guardian until the Attorney needs to act. This may be suitable for people who wish to stagger the costs of creating a Lasting Power of Attorney but it is not usually advisable.

If you would like to discuss this further, please call us on 01273 610 611 or email: info@renaissancelegal.co.uk

Complementary Services

When making an LPA it is a good opportunity to review your financial circumstances, any tax planning you have in place and consider making a Will. You may find our Inheritance Tax Planning and Why Make a Will information sheets helpful.

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Renaissance Legal is part of the Renaissance group of companies alongside Renaissance Trust and Renaissance Financial. Together, the group offers legal services, financial services, Inheritance Tax planning, welfare benefits advice and Trusts administration.

The expert team at Renaissance Legal can assist you with all aspects of planning for the future, including Wills, Letters of Wishes, Trusts, Powers of Attorney, Estate Administration and Court of Protection work.

As lawyers we are not permitted to provide you with financial planning advice. Renaissance Financial, our dedicated financial services company, provides tailored financial advice for families, individuals, Trustees, Deputies and Attorneys in relation to investment and wealth management services - including, retirement and Inheritance Tax planning, as well as the financial management of Trusts.

This guide is intended as general information for clients and other readers. It is not a substitute for considered advice on specific issues. Any action taken depends on your individual circumstances. Consequently, we cannot accept any responsibility for action which may be taken as a result of reading this guide or for errors or omissions contained within it.