



Ungoed-Thomas & King
Solicitors • Cyfreithwyr

Lasting Powers of Attorney

*Questionnaire and details of information required for
the purposes of obtaining Lasting Powers of Attorney*

UNDERSTANDING | TRUST | KNOWLEDGE

▼ Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is a legal document where a person (the Donor) grants to another person / persons (the Attorney) authority to make certain decisions on his or her behalf.

Types of LPAs

There are two types of LPAs:

- A **Financial decisions LPA** which provides your Attorney with authority to deal with your property and financial affairs and which can come into effect immediately on registration with the Office of the Public Guardian (OPG)
- A **Health and Care decisions LPA** which provides your Attorney with authority to make health and welfare decisions on your behalf when you lack mental capacity to do so yourself. Within this document, you can also provide authority to your Attorney either to give or refuse consent for life-sustaining treatment. This LPA will only become effective on your mental incapacity.

Your Attorney

As with any Power of Attorney, an LPA is a very powerful important document and you should take care who you appoint as your Attorney / Attorneys, as they should be trustworthy and have the appropriate skills to act on your behalf. If you appoint more than one Attorney, you can appoint them to act jointly, which means that your Attorneys must always agree with what is being done and sign all documentation together and that if one Attorney dies or loses capacity or (in the case of a Financial decisions LPA) becomes bankrupt, the appointment of both Attorneys will fail. Alternatively you can appoint them jointly and severally, which means that any one of your Attorneys can act on your behalf without necessarily involving the others. You may even appoint them to act jointly for some matters and jointly and severally for others, although this should only be done with further advice from ourselves, as it may cause problems when using the Power of Attorney.

Replacement Attorney

Under the LPA legislation, it is possible to appoint one or more Replacement Attorney(s) as a successor to your Attorney / Attorneys, in the situation where your Attorney may die before you or may be unable or unwilling to act for you.

When can the Attorney Act?

Your Attorney will only be able to act for you in relation to a Financial decisions LPA once the legal formalities have been completed and the document is registered with the OPG. This LPA can be used both when you have capacity to act as well as when you lack mental capacity to act in your affairs.

The Health and Care decisions LPA will only come into effect once the document is registered at the OPG and you have become mentally incapacitated. No third party can make decisions for you in relation to your health and welfare treatment whilst you continue to have the mental capacity to make your own decisions.

Certificate Provider

Once you have signed the LPA, a Certificate Provider will need to provide a certificate within the document which confirms that the Certificate Provider has discussed the provisions of the LPA with you, that you have understood the nature and the scope of the authority that you are providing to your Attorney, that there is no undue influence or duress compelling you to make the LPA and that there is no other reason why the LPA should not be granted. You can choose your own Certificate Provider.

Existing Enduring Powers of Attorney

Any enduring Power of Attorney (EPA) validly made before 1st October 2007 will continue to be a legal document, but can only be used in respect of your property and financial affairs. An EPA does not give your Attorney authority for dealing with your health and welfare issues. If you wish to give such authority to your Attorney, you will need to make a Health and Care decisions LPA.

What happens if you have not made an LPA or EPA

If you lose your capacity and can no longer make decisions for yourself, it would be necessary for a member of your family, close friend or professional adviser to make an application to the Court of Protection for the appointment of a Deputy who will make decisions on your behalf. This is both costly and time-consuming and means that there would be an ongoing liability to pay annual supervision fees, an annual insurance bond and fees for submitting annual accounts of your assets to the Court.

In having a valid EPA or LPA, you will avoid the necessity of an application being made to the Court of Protection by a third party for a Deputyship Order, if you have lost your mental capacity.

For further information, please make an appointment with one of our specialist Solicitors. You may find it helpful (and it will certainly assist us) if you complete the following questionnaire beforehand.

▼ Personal Information

1

Title:.....

First Name:.....

Middle Name:.....

Last Name:.....

Date of Birth:.....

Address:.....

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Post Code:.....

Email:.....

▼ Background Information

2

Tick which lasting power you wish to make:

Financial decisions LPA

Health and Care decisions LPA

Attorney 1

Title and full names.....

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Address:.....

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Post Code:.....

Date of Birth:.....

Email:.....

Attorney 2

Title and full names.....

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Address:.....

.....

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Post Code:.....

Date of Birth:.....

Email:.....

If you appoint more than one Attorney, you can:

- appoint them to act jointly, which means that your Attorneys must always agree with what is being done and sign all documentation together, so that if one Attorney dies or loses capacity or (in the case of a Financial decisions LPA) becomes bankrupt, the appointment of both Attorneys will fail; or
- appoint them jointly and severally, which means that any one of your Attorneys can act on your behalf without necessarily involving the other on matters; or
- appoint them jointly for some decisions and jointly and severally, for others

Tick how you would like your Attorneys to act?:

Jointly

Jointly and severally

Jointly for some decisions and
jointly and severally for others

(Please specify in box below)

Replacement Attorneys will only act once your Attorney can no longer act for you e.g. because of death, bankruptcy or lack of mental capacity.
You do not have to appoint any replacements.

Replacement Attorney 1

Title and full names.....

Address:.....

.....

Post Code:.....

Date of Birth:.....

Email:.....

Replacement Attorney 2

Title and full names.....

Address:.....

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Post Code:.....

Date of Birth:.....

Email:.....

If you have appointed more than one Attorney, your Replacement Attorneys will step in when one of the original Attorneys is not able to act for you. Should you instead wish the Replacement Attorneys to act only when all of your original Attorneys are no longer able to act for you, please tick the box

With a health and care decisions LPA, your Attorneys can only make decisions once you have lost mental capacity.

With a financial decisions LPA, you can choose as to whether your Attorneys will be able to make decisions as soon as the LPA has been registered by the Office of the Public Guardian or only when you do not have mental capacity.

Even if you choose the first of these two options, you will still be in control of your financial decisions and one of the principles of the Mental Capacity Act is that your Attorneys must assume that you can make your own decisions unless it is established that you cannot do so. They must also help you to make as many of your own decisions as you can and they are required to act in your best interests. They are responsible to you for any decisions you let them make.

In the case of a financial decisions LPA, please indicate below as to whether you want your Attorneys to be able to make decisions as soon as the LPA has been registered or only when you do not have mental capacity. Be careful with the second option since this can be difficult to operate, particularly if you suffer from mental incapacity on a gradual basis and therefore enter into and out of a state of mental incapacity. Additionally, some financial institutions require that you prove, if you select this option, that you do not have mental incapacity on each occasion on which the LPA is used. It is therefore less easy to operate.

Please indicate your choice

- I wish my financial decisions LPA to be able to be used as soon as it has been registered, even if I still retain mental capacity

- I only want my financial decisions LPA to be able to be used when I do not have mental capacity

If you wish, you can choose up to five people to be told when your Lasting Power of Attorney is being registered. This gives people who know you well an opportunity to raise any concerns or objections before this Lasting Power of Attorney is registered and can be used. It is not compulsory however and is likely to be irrelevant if, as in most cases you decide to register the Lasting Power of Attorney as soon as it has been signed, rather than leaving your Attorneys to register it.

This should be an adult and someone with whom you are likely to have contact throughout your life such as a family member or close friend (but not an Attorney or Replacement Attorney). It is best to choose someone different to your Certificate Provider:

First or only person to be told (if applicable)

Title and full names.....

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Address:.....

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Post Code:.....

Email:.....

Second person to be told (if applicable)

Title and full names.....

.....

Address:.....

.....

Post Code:.....

Email:.....

Please include any further persons at Section 10.

▼ Preferences

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You may wish your Attorney(s) and Replacement Attorney(s) to follow guidance specified by you. This will not be legally binding upon them but may assist them in carrying out their role.

Please state any preferences that you wish your Attorney(s) or Replacement Attorney(s) to follow:

▼ Instructions and Conditions

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You may give instructions to your Attorney(s) and Replacement Attorney(s) as to what they may or may not do. These are legally binding and should be used with caution.

Please state any give instructions (if any) you would like to impose e.g.:

- Limiting the scope of the LPA to certain assets
- Allowing your Attorney(s) the right to employ an Agent to assist in matters of a financial nature

The choice of a suitable Certificate Provider is a personal and important decision.

There are two types of Certificate Provider:

- A knowledge-based Certificate Provider, who is someone who has known the person making the power personally for the previous two years or
- A skills-based Certificate Provider, who has relevant professional skills and expertise

A skills-based Certificate Provider must be one of the following:

- A registered health-care professional such as a General Practitioner
- A registered social worker
- A barrister, solicitor or advocate
- Someone who considers they have the relevant professional skills and expertise to be a Certificate Provider

A Certificate Provider cannot be:

- Under 18 years of age
- A member of either the donor or their Attorney's family
- A business partner or paid employee of the donor or Attorney(s)
- An Attorney appointed in the proposed or another Lasting Power of Attorney or any Enduring Power of Attorney made by the donor
- The owner, director, manager or an employee of a care home in which the donor lives (including care homes with nursing care) or their family member or partner

The advantage of having a knowledge-based Certificate Provider is that they are unlikely to charge you for this. However, if challenged, they could be called to the Court of Protection to justify their opinion. They would need to show to the Court that they know how to assess capacity under the Mental Capacity Act 2005. If the challenge were successful the LPA would not be valid. A skills-based Certificate Provider would usually charge, but would be expected to have higher skills and expertise than the knowledge-based adviser. The Solicitor acting on your behalf in the preparation of the LPA could act as your Certificate Provider (unless they are appointed as your Attorney).

Details of Certificate Provider

Title and full names.....

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Address:.....

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Post Code:.....

Email:.....

▼ Additional Information 10

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Ungoed-Thomas and King is a leading company of Carmarthenshire solicitors. We pride ourselves in offering a first-class service at competitive rates.

We have specialist expertise and knowledge in a wide range of legal work and services including:

- Residential Property
- Mortgages
- Wills
- Lasting Power of Attorney and Deputyships
- Trusts and Estate Planning
- Probate
- Family and Matrimonial
- Commercial Property

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