



Lasting Power of Attorney FAQs

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What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document by which you (the Donor) nominate a person or persons (the Attorneys) to be authorised to make decisions on your behalf.

Are there different types of Lasting Powers of Attorney?

There are two types of Lasting Power of Attorney:

A Financial Decisions Lasting Power of Attorney

Your Attorneys can make decisions about such matters as paying your bills, checking your income from pensions, benefits and investments, looking after your bank and savings accounts. Ultimately you may need to sell your house to pay for your care and your Attorneys can do this on your behalf. You can list any instructions that your Attorneys must follow, or any preferences that you would like them to take into account when making decisions on your behalf.

A Health and Care Decisions Lasting Power of Attorney

Your Attorneys can make decisions on matters to do with your health and personal welfare. This includes decisions about medical treatment, where you are cared for, the type of care you receive, and day-to-day things like your diet, how you dress and your daily routine. You can list any instructions that your Attorneys must follow, or any preferences that you would like them to take into account when making decisions on your behalf. You will also need to choose whether or not you want your Attorneys to be able to make decisions about life-sustaining treatment. If you choose not to, then all decisions about life-sustaining treatment will be made by your healthcare team, unless you have made an advance decision.

If I am creating a Lasting Power of Attorney, can I appoint one Attorney to make property and affairs decisions for me and another Attorney to make welfare decisions for me?

Yes, you can appoint different Attorneys for each type of Lasting Power of Attorney as they are two separate forms or you may decide to have the same Attorneys for both forms.

Who can be an Attorney?

Anyone over the age of 18 can be an Attorney. It is usual for Donors to appoint close family members as their Attorneys. However, Donors can also choose to appoint others such as friends or their solicitor either jointly with family members, on their own, or as replacements Attorneys.

Can my Attorneys also be beneficiaries or executors in my will?

Yes, they can be both beneficiaries and executors of your Will.

When can an Attorney act?

Attorneys only have authority to act when the Lasting Power of Attorney is registered at the Office of the Public Guardian. Attorneys for financial decisions can act as soon as the Lasting Power of Attorney is registered if you wish them to and also if you later lose capacity. Attorneys for a health and care decisions Lasting Power of Attorney can only act when the Donor is unable to do so because they no longer have capacity.

How many Attorneys can I have?

There is no limit on the number of Attorneys you can have. The number of Attorneys you would be advised to have would depend on your individual circumstances.

Can I restrict my Attorney's powers?

It is possible within the Lasting Power of Attorney document to place restrictions on how your Attorneys act for you. For example, you may wish to give your Attorney authority over only some of your assets or to act only if you have lost mental capacity. However, this is not very usual as your Attorneys should be people you trust wholeheartedly. Therefore, to impose restrictions in the majority of cases may be unnecessary.

Can I specify guidance on how I want my Attorneys to act for me?

The Lasting Power of Attorney allows you to set out guidance for your Attorneys. This is optional and is not binding but, if there are potentially difficult decisions, it may be helpful to your Attorneys to know your preferences in advance.

Can my Attorneys make gifts on my behalf?

In general, Attorneys are not permitted to make gifts without the approval of the Court of Protection. This is the case even if the Attorneys wish to benefit the Donor by making the gift (e.g. reducing the Donor's estate for inheritance tax purposes). There is limited authority for Attorneys to make gifts to charities and gifts to family members of a seasonal nature, or on the occasion of a birth or marriage/civil partnership, or on the anniversary of a birth or marriage/civil partnership. If Attorneys are considering making a gift, they should first seek appropriate legal advice.

Can Attorneys sell my house?

Attorneys can only sell your house if you own the property in your sole name. If you own the property jointly, they would have to liaise with the other owners. If the Attorneys are also the co-owners (e.g. a husband appointing his wife as his attorney) then the Attorney alone could not sell the house and a trustee would need to be appointed (at which point you should obtain appropriate legal advice).

Do I need a replacement Attorney?

Replacement Attorneys may be beneficial to you as they offer the chance of succession if your original Attorneys die before you or become unable to perform their duties. Certainly, if only one original Attorney is to be appointed, having a replacement would be advisable. It is not mandatory for you to have a replacement Attorney should you not wish to have one.

Can I cancel my Lasting Power of Attorney?

You can cancel your Lasting Powers of Attorney as long as you have mental capacity, it does not matter if the Lasting Power Attorney has been registered at the Office of the Public Guardian

Can my Attorneys choose to stop acting on my behalf?

Your Attorneys may choose to stop acting as your Attorneys. If your Lasting Power of Attorney has already been registered, then your Attorneys will have to send a formal notice to both you and the Office of the Public Guardian that they wish to stop acting as your Attorneys.

When can I register my Lasting Power of Attorney?

You can register your Lasting Power of Attorney as soon as it is properly executed. We advise clients to register the Lasting Power of Attorney before it is needed so as to avoid any inconvenience later if there are any issue with the forms or if it is needed urgently, for example because you become unwell, as the registration process usually takes around 12 weeks.

What happens if I have no Lasting Power of Attorney and I lose capacity to manage my affairs?

The only way a person can be legally appointed to manage your affairs would be through a Deputyship Order at the Court of Protection. This can be a lengthy and expensive process.