

LASTING POWERS OF ATTORNEY

A power of attorney is a legal document whereby a person gives another person or persons (the attorney(s)) authority to make certain decisions on his or her behalf.

Types of Lasting Powers of Attorney (LPAs)

There are two types of LPAs:

- A **Property and Financial Affairs LPA**, which allows your attorney authority to deal with your property and finances, as you specify.
- A **Health and Welfare LPA**, which allows your attorney to make health and welfare care decisions on your behalf, only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

Your Attorney

Like any power of attorney, an LPA is an important document and you should take care whom you appoint as attorney(s) as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case they die or otherwise cannot act for you.

When can the Attorney act?

The attorney will only be able to act when the LPA has been signed by you and your attorney and certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm there has not been any fraud or another reason why you cannot make the power. It must then be registered with the Office of the Public Guardian before it can be used. The Property and Financial Affairs LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The Health and Welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

Existing Enduring Powers of Attorney

Any Enduring Power of Attorney (EPA), validly made before 1 October 2007, can still be used but only in respect of your property and financial affairs. If you wish to give authority over your health or welfare you will need to make a Health and Welfare LPA.

What happens if you have not made a LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a Health and Welfare LPA.

About Solicitors for the Elderly

Solicitors for the Elderly (SFE) is a national organisation of lawyers, such as solicitors, barristers and legal executives, committed to providing and promoting high quality legal services for older people, their families and carers. Its members must have a set number of years' experience advising older people and complete an examination before joining as a full or associate member. They must also comply with our Code of Practice, so you can be confident about the service you receive.

Members of SFE have undergone specific training on acting as the certificate provider, which added to their experience of working for older and vulnerable adults, means that if challenged they would be able to justify their opinion with fully supported records. This knowledge, with the backing of insurance, provides protection for someone making an LPA.

All members of our team have received relevant training.

For more detailed advice contact your local branch of [Humphries Kirk](#).