What is an LPA?

A Lasting Power of Attorney (LPA) is a legal document that allows you to appoint one or more people you trust to make decisions on your behalf, should you become incapable of dealing with your own affairs. The people you appoint are known as your Attorneys.

People often believe that they won’t need an LPA until they are elderly, however, unforeseen circumstances can arise that may lead you to become incapable of dealing with your affairs, such as an accident or illness.

Without an LPA, if you do become incapable of managing your own affairs, someone will have to apply to the Court of Protection for a Deputy to be appointed to deal with your affairs. This can take a long time to process. Your spouse, civil partner or ‘next of kin’ is not automatically able to make decisions on your behalf without an LPA in place.

There are two types of LPA and you can make either or both:

A Property and Affairs LPA allows your Attorney to make decisions about your property and financial affairs. Their role might typically include paying bills and organising the sale of your house. You can put restrictions and conditions on their powers if you wish.

A Health and Welfare LPA allows your Attorney to make decisions about your welfare, which might include consent around medical treatment. With this type of LPA, your Attorney can only make decisions on your behalf if you lack the mental capacity to make them yourself.

Your Attorney must follow the Mental Capacity Act when making any decisions, which means:
- They must act in your best interests.
- They must consider your wishes, past and present.
- They cannot take advantage of you to benefit themselves.
- They must keep your money separate from their own.

Who can be an Attorney?

An Attorney can be anyone over the age of 18, and they must not be bankrupt. It must be someone you trust, as they will be able to make all decisions about your property, finances, and/or personal welfare.

You can choose multiple Attorneys if you wish, and can make restrictions on what they can do, as well as deciding whether they act together ("jointly") or independently ("severally"). If they act jointly, they must agree on all decisions and both sign any relevant documents. You can also decide that they should work jointly for certain decisions, such as selling your house, but can work individually for others, such as more day-to-day decisions. If they are appointed to act jointly and one Attorney dies, or becomes permanently unable to act, the LPA becomes invalid.
How to make an LPA

It is recommended that you have an LPA drawn up by a qualified solicitor to ensure it is valid. Using a solicitor is especially recommended if you would like to include restrictions, to ensure the LPA is not rejected. However, if you’d rather not see a solicitor, you can make an LPA online, or download the forms at www.gov.uk/power-of-attorney/makelasting-power

An LPA must be registered with the Office of the Public Guardian before it can be used. It can be registered at any time, and it is recommended you register it once it has been made, so that it can be used as soon as the need arises.

Enduring Powers of Attorney

You may already have an Enduring Power of Attorney (EPA) in place, which was the system before LPAs were introduced. If you have an EPA, it is still valid and can be used, but you are no longer able to create a new one.

An EPA covers finance and property, so if you already have one in place, you don’t need to create a Property and Affairs LPA. However, EPA’s do not cover health and welfare decisions, so you may wish to create a Health and Welfare LPA as well so that you are covered for both.

Useful contacts

Citizens Advice Bureau
www.citizensadvice.org.uk

Solicitors for the Elderly
0844 5676 173
admin@solicitorsfortheelderly.com
www.sfe.legal

The Law Society
020 7320 5650
www.lawsociety.org.uk

Law Society of Scotland
0131 226 7411
lawscot@lawscot.org.uk
www.lawscot.org.uk

This fact sheet is for information only. Always seek legal advice for any questions or concerns surrounding these issues.