

Acting as an Attorney



There are two types of Lasting Power of Attorney (LPA); one for property and financial affairs (LPA PFA) and one for health and welfare (LPA HW). Both are legally binding documents which the Donor can use to give authority to someone (their Attorney) to make decisions on their behalf at some point in the future. Once an LPA PFA is in place the Donor can choose when they wish to start using it; they do not have to have lost capacity for it to be used. The LPA HW, by comparison, can only be used once capacity is lost.

Not many of us like to think about getting old or worse, losing capacity, so we don't plan for it. However, there is an ever-increasing number of people living with dementia, and if capacity is lost without either type of LPA in place, it will be left to the Court to decide who takes care of these aspects of your life.

If you are the adult child of elderly parents we would encourage you to talk to them now about the future and whether they have considered putting LPAs in place. However, as potential Attorneys, it's important that you understand what your role and responsibilities will be if chosen to act.

In order for either type of LPA to be used they must be registered at the Office of the Public Guardian (OPG); we always encourage clients to register their LPAs at the time they are prepared to avoid future delays. It is important that the original documents are stored safely as financial institutions and hospitals will expect to see either the original document or a certified copy of the original. If TSP prepares LPAs we store the originals on behalf of the donor and provide a certified copy. Additional certified copies can then be requested if needed.

If asked to act as an Attorney you will be appointed either as a sole Attorney or with another. This may be on a joint basis, where all

decisions must be made together, or on a joint and several basis, which means that Attorneys can make decisions on their own or with the other named Attorneys. In some cases, although rare, you could potentially be appointed on a joint basis for some decisions and joint and several for others. It is important that you understand the basis of your appointment and when you are permitted to act.

As an Attorney you must always act in the "best interests" of the donor. Make sure that you check the LPA for instructions and preferences. If the LPA includes instructions then by law you must follow them. If preferences are included you should also consider them when making a decision on behalf of the donor, taking into account any wishes or views that the donor has previously disclosed to you. If the donor still has capacity, or if their capacity fluctuates, check with them regarding any decisions you intend to make.

Make sure you record any decisions you make as well as any meetings you have to substantiate your decisions. In this way, if any questions are raised, by other family members or the Office of the Public Guardian (OPG) you will have evidence as to the reasons you made those decisions. Sometimes, if the OPG have any questions, they may send a Court of Protection visitor to meet with you.

As a lay Attorney you are not paid for your role but can claim out of pocket expenses. This could include travel costs (but not the cost of social visits), telephone calls and postage costs. Both types of LPA end on the death of the donor. Your role as an Attorney will also end if you are declared bankrupt or if the donor decides to revoke the LPA.

ACTING AS AN ATTORNEY FOR PROPERTY AND FINANCIAL AFFAIRS

When the need arises for you to act, the LPA PFA will need to be logged with all financial institutions the donor is associated with; you will then be able to act on their behalf. You will be able to pay household bills, run the donor's bank accounts, deal with the pension service, make decisions about buying or selling investments or even selling or renting a property should the donor need to go into care. When making day to day decisions such as what items the donor might need when moving into a care home it is always worth consulting professionals such as care home staff.

Your role also extends to potentially making gifts on behalf of the donor to family, friends and charities but only to the extent that the donor would have made themselves. As an Attorney you are not permitted to benefit from your position and there are strict rules regarding making gifts to yourself as an Attorney.

You must keep the donor's finances separate to you own, although there are some circumstances when this is permitted, such as when joint accounts are held by a husband and wife. In addition, if you are selling the donor's property for less than market value or to a relative of yours or the donors it may be necessary to obtain the Court of Protection's authority to the transaction.

It is worth repeating here your overriding responsibility as an Attorney: You must always act in the "best interests" of the donor which may mean taking independent advice if you are selling or disposing of a property for example.

ACTING AS AN ATTORNEY FOR HEALTH AND WELFARE

If you are acting as an Attorney for Health and Welfare this allows you to discuss the donor's healthcare and medical treatment with medical professionals. You may also be required to make decisions about where a donor should live, day-to-day decisions about their diet, dress or daily routine, as well as decisions to accept or refuse treatment for the donor. It is worth noting that being someone's "next of kin" does not give you any right to make decisions about their treatment and medical professionals only have to follow the instructions of the Attorney(s) for health and welfare.

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