



# Lasting Power of Attorney

There may come a time when you face difficulties with managing your financial affairs or your health and welfare and wish someone could do this on your behalf. We have an experienced team that specialises in providing all the advice you will need.

## The Mental Capacity Act and its Code of Practice

The Mental Capacity Act (2005) protects people who may not be able to make some decisions for themselves because of, for example:

- Dementia of any kind
- Learning disabilities
- Mental health problems
- Stroke or head injuries

It allows you to plan in advance for other people to make decisions on your behalf at a point in time when you might lose the capacity to make decisions yourself. The Act covers decision making about your financial, health and medical affairs.

## What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal document that allows you to choose who you want to make decisions on your behalf when you lack mental capacity to make decisions for yourself. It is completed while you still have capacity. It cannot be used before it has been registered with the Office of the Public Guardian.

The Lasting Powers of Attorney are referred to as 'LPA' throughout the rest of this guidance.

There are two types of LPA:

- Property and Financial Affairs allow your attorney to make decisions about:
  - Paying bills and handling tax
  - Dealing with your savings and bank accounts
  - Collecting benefits and pensions
  - Selling your house
  - Making investments
- Health and Welfare allow decisions on:
  - Giving or refusing consent to particular types of health care, including medical treatment decisions
  - Staying in your own home with the help and support you need
  - Moving into residential care and choosing the right home for you
  - Day to day issues, like your diet, dress, or daily routine

You should make two LPAs as both your finances and future welfare are important to you.

## The role of the Office of the Public Guardian (OPG)

The OPG is part of the Ministry of Justice. The OPG manages the registration process of LPAs and they maintain a register of them all. It also deals with any complaints and concerns raised if, for example, someone feels that an attorney is acting wrongly.

## Who can make a Lasting Power of Attorney?

Anyone aged 18 or over who understands what they are signing when they make it.

## The benefits of making a Lasting Power of Attorney

An LPA allows you to plan in advance:

- The decisions you want to be made on your behalf in the future if/when you lose capacity to make them yourself
- The people you want to make these decisions
- How you want the people to make these decisions

Having an LPA is a safe way of maintaining control over decisions made for you because:

- It has to be registered with the OPG before it can be used
- Someone has to confirm that you understand the significance and purpose of it
- Your signature and the signatures of your chosen attorneys must be witnessed
- From a legal perspective, your attorney(s) must follow the Code of Practice of the Mental Capacity Act 2005 – if they don't always act in your best interests the OPG can step in and your attorney(s) may be held accountable

## Deciding if you want to make and register a Lasting Power of Attorney

If you lose mental capacity at some point - for whatever reason and if you haven't completed an LPA, other people may need to apply to the Court of Protection to be able to make decisions on your behalf. This can be costly, takes many months and can be demanding and stressful for your relatives, friends and carers.

## Contact us

To keep up to date on news and views about Wills, Trusts, Probate and Powers of Attorney please visit our webpage:

[www.krestonreeves.com/services/legal-services](http://www.krestonreeves.com/services/legal-services)

For more than tax, legal and wealth advice please speak with your usual Kreston Reeves advisor or contact a member of the Kreston Reeves Legal Advisory team using the contact details below:

**Sussex Legal Team - 01403 253282**

**Kent Legal Team - 01634 899800**

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