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Lasting Power of Attorney (LPA)

Frequently Asked Questions

Who should I choose as my attorneys?
You should think very carefully about who you choose as your attorney(s) and any replacements. Attorneys can make important decisions about your money, property and healthcare, so it is vital that you only choose people who you trust to follow your wishes and act in your best interests.

When can my LPA be used?
Your attorneys can only use a Health and Welfare LPA if you lack mental capacity.

A Property and Finance LPA can only be used by your attorney based on the option chosen in your LPA. It can be restricted to be used only if you lack mental capacity or the more flexible option (most commonly chosen) for attorneys to also act with your consent.

The Office of the Public Guardian must register your LPA before use by your attorneys.

What is mental capacity?
Every person must be assumed to have capacity unless it is established that they do not.

Mental capacity is the ability to make a specific decision at the time it needs to be made.

A lack of mental capacity is when a mind or brain problem stops a person making a specific decision when they need to.

How do attorneys decide whether I have mental capacity?
Attorneys must follow the principles of The Mental Capacity Act 2005. A person making a decision must be able to:

- Understand the information relevant to the decision being made
- Retain the information
- Use or weigh up the information
- Communicate his/her decision

Your Lasting Power of Attorney states that:

1. Your attorneys must assume you can make your own decisions
2. Your attorneys must help you make as many of your own decisions as you can and take all practical steps to help you do so
3. Your attorneys must not treat as you as unable to make a decision simply because you make an unwise decision

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4. Your attorneys must act and make decisions in your best interests
5. Your attorneys must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Attorneys need to follow these steps every time before they act for you.

Attorneys need to have a reasonable belief that you lack capacity before they make decisions for you, and they must always act in your best interests. Attorneys may seek the opinion of a doctor or health professional if they are unsure.

What happens if attorneys disagree?
If you think your attorneys are likely to disagree, consider whether they can work together effectively before appointing them in your LPA.

Attorneys should talk to each other and try to resolve issues informally. Attorneys must always act in your best interests and according to your instructions. They should consider your preferences or letter of wishes you may have prepared. If they cannot agree or resolve disputes through mediation, the attorneys may need to seek legal advice and apply to the Court of Protection for a decision. If the attorneys are appointed jointly and severally, they can act independently, even if they disagree.

What if I change my mind about who should be an attorney?
You can revoke the permission of an attorney to act for you providing you have mental capacity. Whether or not you need a new Lasting Power of Attorney depends on if there are any continuing attorneys or replacements appointed. You cannot add a new attorney to an existing LPA.

What happens if anyone named in my LPA changes name or address?
The donor should notify The Office of the Public Guardian for the records to be updated. Please do not alter the registered LPA document as this could invalidate it.

Should I discuss my will with my attorneys?
Although attorneys may not change your will, making them aware of your wishes and where your will is stored is a good idea. If your will includes a gift of an important possession, and your attorneys are unaware of it, they could inadvertently sell the item, resulting in your intended beneficiary not receiving the gift.

Can attorneys make gifts?
Unless you expressly excluded this in your LPA, your attorneys may make gifts under a Property and Finance LPA.

It is essential that the attorney carefully considers the gift before making it. The gift must be reasonable considering the size of your estate and future needs, given on a customary occasion and to a person or charity you would usually have given to.

Where gifts involve large sums of money, property, loans to others or inheritance tax planning, the Court of Protection will need to authorise these to ensure that the gifts made are in your best interests. **Useful Guide: Office of the Public Guardian PN7 Giving Gifts - A guide to the legal background for attorneys and deputies.**

What records do attorneys need to keep?
Property & Finance attorneys should keep records and receipts of income and expenditure. Health and welfare attorneys should record their reasons when deciding where the donor lives or changing medical treatment or care. Keeping a record is important should there be a query over the use of the donor's money or the decisions made.