

STEWARTS
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POWERS OF ATTORNEY



What is a power of attorney?

A power of attorney is a legal document that enables a person (the “donor”) to give to a person they trust (the “attorney”) the authority to act in their name and make decisions on their behalf. A donor can appoint one or more attorneys.

There are different types of powers of attorney and they can be used in different ways.

General power of attorney

The most basic type of power of attorney is a general power of attorney (also known as an ordinary power of attorney).

A general power of attorney is commonly used by a person who knows that they will not be able to attend to their financial affairs for a while, for example, if they have a long stay in hospital ahead of them. A general power of attorney is often limited for a particular period of time. It can also be limited so that it relates to a specific aspect of a person’s financial affairs, for example, dealing with a sale of a house.

An attorney appointed under a general power of attorney cannot make decisions relating to the donor’s welfare.

As a rule, the authority given under a general power of attorney comes to an end if the donor revokes the document, at the expiry of any period specified in the document, or on the death, bankruptcy or loss of

mental capacity of the donor or the attorney.

Can I appoint an attorney for me in the event that I lose mental capacity?

Yes, you can make a Lasting Power of Attorney, more commonly known as an LPA.

There are two types of LPA:

I) Property and financial affairs LPA

This type of power of attorney allows the attorney to manage the donor’s property and finances on a day-to-day basis, for example, by:

- paying bills on the donor’s behalf;
- investing the donor’s money; and
- dealing with the sale of the donor’s assets.

Once the donor loses mental capacity, the attorney cannot make gifts on the donor’s behalf, apart from on customary occasions, such as for birthdays or at Christmas and provided that the value of each such gift is not unreasonable.



2) Health and welfare LPA

This type of power of attorney allows an attorney to make decisions about the donor's health and welfare such as:

- where and with whom the donor should live;
- their day-to-day care;
- whom they have contact with;
- what medical examinations and treatment the donor should have; and
- whether his attorney has the authority to switch off a life-support machine.

A health and welfare LPA gives the attorney rights of access to personal information about the donor, such as his medical records. For as long as the donor retains capacity, the clinician, social worker or other professional carer must obtain the donor's consent to any proposed care and treatment.

If the donor lacks capacity to consent or refuse consent, the professional must go to their attorney to make the decision.

Do I have to make both types of LPA?

No, you can choose to make just one type of LPA or both.

How do I make an LPA?

The LPA forms can be found online at www.gov.uk/power-of-attorney/overview. The form needs to be signed by the donor. The donor's signature must be witnessed. It must also be signed by a 'certificate provider'. A certificate provider is a third party who must sign to confirm that the donor has the mental capacity to make the LPA and is not being forced into making it. A certificate provider can be a colleague or friend of the donor who has known the donor well for at least two years or a professional, such as a doctor or lawyer, who is suited to judging that the donor is able to make an LPA and is doing so free from any influence.

Once signed by the donor and certificate provider, the LPA is signed by the attorney. The attorney must have his signature witnessed. After the attorney has signed the LPA, it must be registered with the Office of the Public Guardian. A fee of £82 is payable to the Office of the Public Guardian for registering the LPA, unless you are eligible for a fee exemption or fee remission.

When can the attorney start to use the LPA?

LPAs must be registered with the Office of the Public Guardian before they can be used. Unless the donor has elected that the financial affairs LPA can only be used if he has lost mental capacity, the attorney can act immediately under a financial LPA if the donor wants them to, even if the donor still has mental capacity.

However, an attorney under a health and welfare LPA can only act if the donor has lost mental capacity to make those decisions for himself.

Can I appoint more than one attorney?

Yes, you can appoint more than one attorney. You can also appoint substitute attorneys who step in and act when one or more of the original attorneys cannot.

If you appoint more than one attorney, you will need to decide whether your attorneys should act:

- jointly, which means they must make decisions together;
- jointly and severally, which means that they can act independently of each other; or
- jointly for some decisions and jointly and severally for others.

Who can be an attorney?

Anyone over the age of 18 and who is not bankrupt or a person to whom a debt relief order has been made can be a financial affairs attorney. For a health and welfare LPA, the attorney must be over 18.

The choice of attorney is important. For a financial affairs LPA, the attorney will look after and make decisions about the donor's money and assets. The attorney needs to be someone that the donor trusts.

I have an Enduring Power of Attorney, is it still valid?

An Enduring Power of Attorney, or EPA, must have been made before 1 October 2007 for it to be valid. If a donor has made an EPA before this date, the appointment of the attorney will continue even if the donor loses mental capacity.



The attorney has a duty to register the EPA with the Office of the Public Guardian if they believe that the donor has lost mental capacity or is losing mental capacity to manage his financial affairs. The registration process gives the donor and their family the opportunity to object to the attorney taking control.

What is mental capacity?

Mental capacity refers to the ability of a person to make a specific decision at the time it needs to be made. Different types of decision require different levels of capacity. For example, a person may have the capacity to pay his household bills but not to invest his money. A person is treated as lacking mental capacity to make a decision for themselves if at the material time they are unable to:

- understand the information relevant to the decision;
- retain that information;
- use or weigh up that information as part of the process of making the decision; or
- communicate their decision.

If a person is unable to do any one of these, they will be treated as lacking capacity.

Is there any guidance for an attorney about how they should act?

Yes, an attorney must act in the best interests of the donor. The Mental Capacity Act Code of Practice provides lots of helpful guidance. A copy can be found at <https://www.gov.uk/government/collections/mental-capacity-act-making-decisions#mental-capacity-act-code-of-practice>.

What happens if I do not have an LPA (or EPA)?

The donor needs mental capacity to make an LPA. If the donor has already lost capacity, he will no longer be able to execute an LPA. An application will need to be made to the Court of Protection for a 'deputy' to be appointed.

The court can appoint a deputy to manage all or some part of a person's financial affairs or to make decisions about their health and welfare. For further information about the applications to the Court of Protection for a deputy to be appointed, please see our separate guidance notes.

“After the accident and all the emotion that goes with it, the support of the Legal Service team was very reassuring and supportive. The personal touch and the information given when so many life changing decisions needed to be made was comforting.” (S.W. a former client)

(BW a former client's partner)

We would like to thank Wilsons Solicitors LLP for their specialist advice and assistance in preparing this guide.

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