

Lasting Powers Of Attorney and Our Standard Fees



BLANDY & BLANDY
solicitors

Lasting Powers of Attorney

From 1 October 2007, you have been able to make a new type of power of attorney, called a ‘lasting power of attorney’ (LPA). A power of attorney is a legal document where a person gives another person or persons (the attorney) authority to make certain decisions on his or her behalf.

There are two types of LPA’s:

- ✓ A property and financial affairs LPA, which allows your attorney to deal with your property and finances, as you specify
- ✓ A health and welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, but only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment

Your Attorney

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. If you appoint more than one attorney, you can appoint them to always act together (jointly) or together and separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case they die or otherwise cannot act for you.



When can the Attorney act?

The attorney will only be able to act when the LPA has been signed by you and your attorney, certified by a person that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate will also need to confirm there has not been any fraud or another reason why you cannot make the power. It must then be registered with the Office of Public Guardian before it can be used. The property and financial affairs LPA can be used both when you have the capacity to act, as well as if you lack mental capacity to make a financial decision. The health and welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

Existing Enduring Powers of Attorney

Any enduring power, validly made before 1st October 2007, will continue to be able to be used but only in respect of your property and affairs. If you wish to give authority over your health and welfare you will need to make an appropriate LPA.

What happens if you have not made a LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes you can give a person(s) authority to make those decisions on your behalf by making a welfare LPA.

Standard Fees

The following information is intended to provide you with an indication of the likely charges for preparing Lasting Powers of Attorney on your behalf. The figures are not intended to be fixed and the exact level of charges will depend upon your circumstances and requirements.

Preparation of Lasting Powers of Attorney (LPA)

Single LPA	£300 + VAT
Pair of LPAs, made by a couple in almost identical terms	£500 + VAT

These figures relate to the preparation of straightforward LPAs. We regard a straightforward LPA as one which:

- ✓ appoints one or two Attorneys
- ✓ if two, the appointment is on the basis that they can act together or independently
- ✓ contains no restrictions or additional guidance for your Attorneys
- ✓ names one or two people to be notified when the LPA is registered.

Additional charges will apply if:

- ✓ your requirements are more complex than outlined above
- ✓ further meetings are required to discuss any aspects of the LPA before it is signed
- ✓ a home or hospital visit is required, when travel expenses will also be payable

Registration of Lasting Powers of Attorney

Our usual charge for registering an LPA is £250 + VAT for each document. In addition, there is a fee payable to the Office of the Public Guardian for the registration of each LPA of £130.

Once registered, your Attorneys will require copies of the LPA. We do not recommend sending the original LPA to financial institutions. We will obtain an "office copy" at the time of registration and further office copies can be obtained from the Office of the Public Guardian for a fee. Alternatively, we can provide certified copies (signed on each page by a solicitor). Due to the length of the LPA we reserve the right to charge a fee of £20 + VAT for each certified copy.

We will store the original LPA in our strongroom and provide you with a copy for your own records. We do not currently charge for this service. The current rate of VAT is 20%.

Completing a Lasting Power of Attorney

Please consider the following list of decisions when making a Lasting Power of Attorney:

Choice of Attorney

Consider the following when choosing an attorney:

- ✓ They must be over 18
- ✓ They must not be an undischarged or interim bankrupt person, if you are making a property and affairs power
- ✓ They must be absolutely trustworthy and possess appropriate skills to make decisions on your behalf
- ✓ They should be people with whom you have a settled and easy relationship and if more than one, who get on with each other well, or who are likely to do so
- ✓ You can appoint one attorney, but it is advisable to appoint more than one to lessen the chance of abuse of the power and ensure continuity in case the attorney cannot act
- ✓ They can be a family member (it is common to appoint partners and children)/friends or your professional adviser, such as your solicitor if the latter is prepared to accept the role
- ✓ They must agree to be your attorney and should understand the role they will be fulfilling. We can provide them with a guide to being your attorney under a Lasting Power of Attorney
- ✓ If they know the people who will be notified on registration, they should have a good relationships with them
- ✓ They must always act accordingly to the principles laid down in the Mental Capacity Act 2005 and in your best interests as set out in the Act and follow the guidance contained in the Code of Practice. All this is set out in our information sheet on the role of attorneys
- ✓ They will need to sign the lasting power of attorney document accepting their role and their responsibilities
- ✓ You will need to supply the full name, address, date of birth, telephone number (landline or mobile) and email address of your attorney(s)

How do you want them to operate in their role as attorney?

- ✓ If you have more than one attorney, consider how you want them to act. Jointly, i.e. always together, or jointly and severally, i.e. together and independently so that they can sometimes sign together and sometimes separately. This works well when the attorneys do not live near to each other, or if one were to retire or die, then the other attorney could still act
- ✓ You can direct that some tasks, e.g. selling your house, must be dealt with together, and some tasks together and independently
- ✓ If they are appointed together they MUST be able to sign together which can be difficult in practice and if one dies, loses mental capacity or becomes bankrupt (if the power is a financial power), the document can no longer be used
- ✓ If you appoint your spouse or civil partner, be aware that dissolution of the marriage or civil partnership terminates the appointment of your spouse/civil partner, unless you have indicated otherwise

Do you want to appoint replacement attorneys, and if so, when?

- ✓ It is especially useful to have a replacement attorney if your original attorneys have been appointed jointly, but is also sensible as a way of “hoping for the best and preparing for the worst!”
- ✓ Your choice of replacement attorney should be considered in the same way as your original attorney, so read the section above on choice of attorney
- ✓ You need to decide which attorney they will be replacing (in the absence of a choice from you, the replacement attorney will replace the first attorney who needs replacing)



Do you wish to place any restrictions and/or conditions on the attorneys you are appointing?

✓ You may wish to consider restricting the occasions when the attorneys should act for you

✓ You do not have to restrict the Attorney, as such restriction will

be legally binding and could cause difficulties

✓ If you do, you must be careful that the documentation can still work. You could have advice on this at our meeting

Do you want to give your attorneys guidance?

✓ You may, for example, feel it would be helpful to give your attorneys some idea of the way in which, ideally, you would like your finances dealt with if you no longer have capacity. In relation to a Personal and Welfare LPA you may want, for example, to indicate where you would want to live and what treatments

you may prefer not to have if you lose mental capacity

✓ Please consider carefully the types of decisions you would like your attorney to make on your behalf, so we can discuss this in our meeting and draft the power to meet your wishes

Do you want your attorneys to be paid?

✓ Generally, family and friends would not expect to be paid, although they would be entitled to recover their out-of-pocket expenses

✓ If you have professional attorneys, they must be paid for their work and this should be covered

Notifying people of the registration of the power

You can choose up to five people to be notified when the LPA is registered with the Office of the Public Guardian. Once the power is registered it can be used by your attorney. It is an important safeguard as they can raise concerns on your behalf. It is important that you think carefully about who you choose. Ideally they should be a person:

- ✓ With whom you are likely to have contact throughout your life
- ✓ Who is interested in your best interests and well being
- ✓ You should tell them that you are naming them, and make sure that they will take their role seriously, as it is for your protection
- ✓ You need to supply their full personal details as above. If you decide that no-one is to be notified, you will need to have two certificate providers
- ✓ Please share the enclosed information with those to be notified so that they can access more information

Who will be the certificate provider?

You must choose a person to act as your certificate provider on the lasting power form. Without this the power cannot be registered or used. This is a VITAL role, as the person concerned is confirming facts about the form and about you, namely:

- ✓ That they have read the prescribed information on the LPA and the part of the form which you have completed, and that part which they will complete
- ✓ That you understand the purpose of the LPA and the scope of the authority which it conveys. (They can only do this if they themselves understand what it is, in order that they can ask you the appropriate questions)
- ✓ That no fraud or undue pressure is being used to induce you to create the LPA (They will need to ask various questions to establish this)
- ✓ That there is nothing else that would prevent your LPA from being created (perhaps a defect in the way in which it has been completed)



Who can act as certificate provider?

- ✓ They must be someone of your choice and are over 18 years of age
 - ✓ Someone whom you have known for at least 2 years, or
 - ✓ Someone who, on account of their professional skills and expertise, considers themselves competent to make the judgments necessary to give the certificate, such as a lawyer or doctor.
- They cannot be:**
- ✓ A member of your family
 - ✓ A family member of any of your attorneys
 - ✓ Your business partner or paid employee
 - ✓ Any attorney appointed by you under this document or another LPA or Enduring Power of Attorney
 - ✓ The owner, manager or employee of a care home in which you are living, or their family member of partner
 - ✓ A director or employee of a trust corporation appointed as your attorney

If we are not appointed as attorneys, we can act as Certificate Provider but, in order to fulfil the requirements of the document itself, we may need to see you alone at some point, even though you are with your spouse/civil partner/partner.

If we agree to act as attorney, we cannot act in the role of Certificate Provider, but will supply you with a list of appropriately qualified local solicitors any one of whom could fulfil this role. Alternatively, your doctor may be prepared to act as Certificate Provider.

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this guide. In the case of specific problems we recommend that professional advice be sought.

Contact us

If you would like to speak to someone about our services or discuss your situation, please contact Jonathan Gater, Head of Probate

T: 0118 951 6801

E: jonathan.gater@blandy.co.uk

More details on our service can be found on our website
www.blandy.co.uk

