



Free Guide To Lasting Powers Of Attorney

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PROTECTION

If you are aged 60 or over and/or retired, then congratulations for getting this far in life!

However, as you get older, there are important and sensitive legal issues which you may wish to think about.

For example, have you:

- Made or updated your Will?
- Thought about making a Lasting Power of Attorney?
- Protected your property and savings assets from being claimed from care fees?
- Made sure that when you die, that your estate does not pay Inheritance Tax?
- Thought about releasing equity from your home?
- Considered planning and pre-paying your funeral?



Adrian Chambers
Head of Wills, Lasting Powers of Attorney & Estate Planning

This guide focuses on the importance of making a Lasting Power of Attorney.

Lasting Powers of Attorney

Nobody knows what the future holds and situations can arise such as failing health, where we are then no longer able to manage and take care of our own personal and financial affairs as we once were able to.

What if you were unable to look after your own affairs?

Have you ever sat and thought what would happen to your home or savings if you struggled both physically and mentally in being able to look after your own affairs?

What if you became unable to manage your own affairs or even understand what you were doing?

How would your savings, property and other assets be dealt with if you were completely incapable?

This might not have any relevance to your life right now, but it could be important to your future. So making a Lasting Power of Attorney to protect against these situations is recommended.

What is a Power of Attorney?

A Lasting Power of Attorney is a legal document where you (the Donor) appoints somebody (an Attorney) to make decisions on your behalf about your property, money and/or health and welfare.

It can be used when you have full mental capacity or if you no longer have the mental capacity to make decisions for yourself.

Reasons to make a Lasting Power of Attorney:

There are many reasons to make a Lasting Power of Attorney, including:

- You choose who controls and protects your finances.
- You choose who makes decisions in connection with your life and personal affairs.
- A Lasting Power of Attorney is like a lifelong insurance policy.
- You avoid the Court of Protection getting involved.
- It protects you and provides you with peace of mind in the event of a deterioration in your mental or physical health.



We are able to provide you with all the information and advice you need so you can make the right decision.

We can prepare the necessary documents and forms and sort it all out for you. Contact us.

The two types of Lasting Powers of Attorney

There are other types of Powers of Attorney but they are not Lasting Powers of Attorney



1. A Property And Financial Affairs Lasting Power of Attorney

A Property and Affairs Lasting Power of Attorney enables a person (called the Donor) to appoint another person (called an Attorney) to deal with matters and make decisions relating to their financial affairs and property.

These can include decisions about bank accounts, savings and investments, collecting pensions and other income, paying bills and outgoings and even selling property.

The Property and Affairs Lasting Power of Attorney can be used by a person's Attorney when the Donor still has mental capacity and also when the Donor does not.

Although, if the Donor wishes, they can request that it be restricted and that it is only for use if the Donor does not have mental capacity.

2. A Health And Welfare Lasting Power of Attorney

A Health and Welfare Lasting Power of Attorney enables you (the Donor) to appoint another person (an Attorney) to deal with and make decisions relating to your health and personal welfare.

These include decisions about medical treatment, accepting or sustaining treatment, your diet, the clothes you wear, your daily routine, such as shopping and even whether you should go into a care home and if so where?

Other types of Power of Attorney:

There are other types of Powers of Attorney that are not Lasting Powers of Attorney.

These include a General Power of Attorney and an Enduring Power of Attorney.

General Power of Attorney

A General Power of Attorney is very similar to a Lasting Power of Attorney with one crucial difference. With a General Power of Attorney it comes to an end as soon as the Donor has lost their capacity, whereas with a Lasting Power of Attorney when the Donor loses their capacity, the Lasting Power of Attorney will continue.

In addition, General Powers of Attorney are normally used on a short-term basis e.g. when somebody is going on holiday or leaving the country and needs somebody else to act on their behalf on certain matters for a certain period of time.

Enduring Power of Attorney

An Enduring Power of Attorney is also similar to a Lasting Power of Attorney but since 2007 it has not been possible to make Enduring Powers of Attorney any more.

Enduring Powers of Attorney are the forerunners to Lasting Powers of Attorney.

If a Donor made an Enduring Power of Attorney before 2007, the document is still perfectly valid and can still be used as long as they are properly registered.

They are becoming less and less common nowadays.

Feedback From Our Clients

"One cannot ask for a better service than you gave. Not only in the last matter but over the years your service has been very high."

Mr. J Letch

"Excellent service and legal advice of the highest level. No improvement necessary. A great job done by all concerned. Thank you."

P.Groves

"Very friendly and easy to understand, always made you feel important and not just a number."

Mr & Mrs Cole

"Service was exceptional, first class communication."

Mr M. Wardell

"Friendly, competent, good value, easy to contact."

M. Anderson

"Hand on heart, excellent service and a very comfortable feeling to talk. First class."

T. McHugh

Why make a Property and Financial Affairs Lasting Power of Attorney?

You may at some stage in your life struggle to deal with your property and financial affairs either due to physical or mental difficulties.

Physical reasons include you struggling to carry out certain tasks because of difficulties such as walking any distance, talking over the phone or being hard of hearing.

Mental reasons could include starting to become forgetful and not remember things so easily or becoming confused with certain matters.

You might even develop problems such as Alzheimer's or some other mental condition and that could result in you losing your mental capacity.

What a Property and Financial Affairs Lasting Power of Attorney can deal with:

A Property and Financial Affairs Lasting Power of Attorney can deal with all aspects of your financial affairs including:

- Handling your bank accounts and savings;
- Buying and selling (including your home);
- Paying bills, including care home fees;
- Closing down and winding up a business;
- Other financial matters.

What a Property and Financial Affairs Lasting Power of Attorney cannot deal with:

- Personal welfare decisions;
- Making gifts (subject to exceptions) such as birthday presents and Christmas presents;
- Make a new Will;
- Restrain you (the Donor) unless certain conditions are satisfied;
- Consent to marriage or civil relationship;
- Consent to divorce or adoption.

Prepare before it is too late!

Whilst you are capable you can make a Lasting Power of Attorney and decide who to appoint to look after your property, financial affairs, health and personal affairs in the event of you being unable to do so yourself in the future.





Why make a Health And Welfare Lasting Power Of Attorney?

You may at some stage in your life struggle to deal with your property and financial affairs either due to physical or mental difficulties.

What a Health And Welfare Lasting Power of Attorney can deal with:

- Making decisions about medical treatment;
- Accepting or refusing certain types of healthcare;
- Decisions about life sustaining treatment;
- Your diet;
- The clothes you wear;
- Your daily routine, such as shopping;
- Even whether you should go into a home.

What a Health And Welfare Lasting Power Of Attorney cannot deal with:

- Financial decisions including making gifts;
- Life sustaining treatment unless specifically stated in the Lasting Power of Attorney;
- Making a new Will;
- Restrain you (the Donor) unless certain conditions are satisfied;
- Consent to marriage or have sexual relations;
- Consenting to a divorce or adoption.

Our commitment to you.

We aim to provide our clients with an outstanding legal service.

We are local legal specialists and we offer a fast and friendly service.

We have set ourselves very high standards which means that we aim to always:

- Help and support you;
- Be friendly and professional;
- Provide an outstanding service;
- Offer sensible and realistic fees;
- Use plain English and not legal jargon;
- See you promptly for appointments;
- Reply to letters without undue delay;
- Return phone calls as soon as possible;
- Provide complete confidentiality;
- Keep documents and money secure;
- Keep in regular contact with you.

What are the benefits of making a Lasting Power Of Attorney?

By making a Lasting Power of Attorney, you can ensure that you choose the right person to look after you, and make sure your personal and financial affairs are protected and sorted out by those who you trust.

Furthermore, no-one else would be able to take advantage of your disability or ill health, and therefore it would only be the people who love and care for you that are the ones who will have control and access to your finances and property.

Reasons to make a Lasting Power of Attorney

There are various reasons to make a Lasting Power of Attorney including the following:

- **CHOOSE WHO CONTROLS YOUR FINANCES AND PERSONAL AFFAIRS** - You can choose who takes control of your finances and personal affairs, not the Court or a stranger;
- **LIFELONG INSURANCE POLICY** - As we get older the risks of developing Alzheimer's or struggling or being unable to look after your own affairs increases. Sometimes things happen suddenly and quickly, such as a stroke. A Lasting Power of Attorney is like a lifelong insurance policy to protect you;
- **AVOID COURT OF PROTECTION INVOLVEMENT** - If at some point in the future you are unable to handle your financial or personal affairs and have not made a Lasting Power of Attorney then it is likely that an application to the Court of Protection would need to be made. This is time-consuming and a very expensive process.
- **PEACE OF MIND** - Having a Lasting Power of Attorney and having your affairs in order will give you peace of mind.

CONTACT US TODAY FOR A FREE NO OBLIGATION QUOTE



What happens if you have not made a Lasting Power Of Attorney?

The loss of control over your finances and personal affairs.

If there is a deterioration in your physical or mental health and you then struggle or are unable to make decisions in relation to your finances or personal affairs, then this can cause an awful lot of difficulties and problems for yourself and your family and it can become very difficult to sort anything out on your behalf.

Involvement of The Court Of Protection

If you lack mental capacity to make financial decisions, 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 very expensive and time consuming.

To avoid potential disputes in the future, you can give an Attorney authority to make those decisions on your behalf by making a Health and Welfare Lasting Power of Attorney.

Office Of The Public Guardian

The Court of Protection is a Superior Court created under the Mental Capacity Act 2005. It protects the property, financial affairs and personal welfare of people who lack the mental capacity to make decisions for themselves. The Court of Protection works closely with the Office of the Public Guardian; with the latter completing more administrative tasks such as issuing a Lasting Power of Attorney.

Risk of disputes

If there are disputes regarding a Lasting Power of Attorney, then the issue should be directed to the Court of Protection.

Furthermore, if an individual does not have a Lasting Power of Attorney to direct who should deal with their affairs, and they subsequently lose their mental capacity, the only way in which a family member or close friend can make decisions on their behalf is to apply to the Court of Protection.

This method is ultimately used to ensure that individuals are not taken advantage of when at their most vulnerable.

The Donor

The Donor is the person who actually makes the Lasting Power of Attorney.

What is the criteria for a Donor?

A Donor must be over the age of 18 years and must be of sound mind and have full mental capacity.

Why should a Donor make a Lasting Power of Attorney?

There are various reasons why a Donor might want to make a Lasting Power of Attorney.

It is something to consider if the Donor believes that they are at risk at some point in the future of either struggling or being unable to look after their own financial and personal affairs.

By making a Lasting Power of Attorney a Donor can appoint family members or friends to act as their Attorneys to potentially make decisions on their behalf, and in their best interests in connection with the Donor's financial or personal affairs.

What happens when a Donor has made a Lasting Power of Attorney?

After the documentation has all been signed off and registered at the Office of the Public Guardian then often not much does happen. In most cases the documents are usually filed away either at the solicitor's offices, or retained by the Donor, often gathering dust hopefully never to be used in the Donor's lifetime.

It is only if the Donor does start to struggle, either physically or mentally, that the Donor and the Attorneys might then want to consider retrieving the Lasting Power of Attorney documents out of storage and start using them.

The capacity to create a Lasting Power Of Attorney

The Donor

A Donor cannot create a Lasting Power of Attorney unless at the time when the Donor executes the document the Donor has reached 18 years of age and has the capacity to execute it.

The principles

An Attorney must follow the principles contained in the Act ("the principles"). They are:

- A person must be assumed to have mental capacity unless it is established otherwise that they lack capacity;
- A person is not to be treated as being unable to make a decision unless all practicable steps to help them to do so have been taken without success;
- A person is not to be treated as unable to make a decision merely because they make an unwise decision;
- Any act done or decisions made must be made in the person's best interest;
- Before the act is needed and whether the outcome can be achieved in a way which is less restrictive on the person's rights and freedoms.

People who lack mental capacity

A person lacks capacity when there is impairment or disturbance of the brain which may either be permanent or temporary.

This should not be established by reference to a person's age or appearance, or a condition which might lead to an unjustified assumption about capacity.

Choosing an Attorney

You need to consider carefully who to appoint as an Attorney.

Selecting an Attorney

A Donor needs to consider carefully who to appoint as their Attorneys. You have to completely trust them and be sure they will look after your best interests.

Factors to take into account when appointing an Attorney

1. Can you trust them?
2. How well do you know them?
3. How long have you known them?
4. Are they sensible and reasonable?
5. Are they financially secure?
6. Are they in reasonably good health?
7. How suitable you think they will be in taking on the role?
8. How comfortable they will be at taking on the role?

How many Attorneys to use?

A Donor can choose as many Attorneys as they like to either act straightaway or as replacement Attorneys. Most people choose one or two people and usually no more than four.

Always select more than one

It is always best to try and select more than one Attorney. You never know what can happen in life.

At some stage one of your Attorneys might decide they no longer want to act as your Attorney or they may lack mental capacity themselves or may even die. Having more than one Attorney means that if something does happen to your main Attorney that there is someone else who can take over and carry on acting on your behalf.

Joint and Jointly and Severally (Independently)

More than one Attorney can be appointed as follows:

- i) Jointly;
- ii) Jointly and severally (independently);
- iii) Jointly in respect of some matters, and jointly and severally in respect of others.

Notifying people about the registration of a Lasting Power Of Attorney

Named Persons - A Donor may name up to five persons (excluding the Donee) who are entitled to be notified of an application to register a Lasting Power of Attorney.

Who can be a Named Person? The named person can be anyone, provided they are not an Attorney or Replacement Attorney.

What forms are used? A Donor or Donee who is about to make an application to register the Lasting Power of Attorney must notify the named person using form LPA 3.

Objections - The named persons have a right to object to the proposed registration of the Lasting Power of Attorney and may do so within three weeks from the day on which the notice was given to them.

The Certificate Provider

The Donor must choose someone to act as their Certificate Provider. Without this, the Lasting Power of Attorney cannot be registered or used.

A Lasting Power of Attorney must include a certificate by a Certificate Provider at the time the Donor signed the document confirming:

- The Donor understands the purpose of the document and the scope of the authority conferred under it;
- No fraud or undue pressure is being used to induce the person to create the document and;
- There is nothing else that would prevent the Lasting Power of Attorney from being created.

Independence of a Certificate Provider

The prescribed form requires that the Certificate Provider is independent. The Certificate Provider has to have a strong element of detachment from the matter. The Certificate Provider is not excluded from being named person or a witness.

Categories of Certificate Provider

There are two types of categories of Certificate Provider who may give a certificate:

- Knowledge certification - has known the Donor personally for a period of at least 2 years (knowledge more than an acquaintance);
- Skills certification - someone who reasonably considers that he has the relevant professional skills and expertise to certify such matters.

Who can be a Skills Certificate Provider?

A Skills Certificate Provider could be one of the following:

- A registered health care professional, such as a general practitioner;
- A registered social worker;
- A Barrister, Solicitor or Advocate;
- An independent Mental Capacity Advocate.

Who cannot be a Certificate Provider?

A Certificate Provider cannot be:

- Under 18 years of age;
- A member of either the Donor or his Attorney's family;
- A business partner or paid employee of the Donor or Attorney(s);
- The owner, director, manager or an employee of a care home in which the Donor lives, their family member or partner.

The registration of a Lasting Power of Attorney

In order for a Lasting Power of Attorney to be valid and be used by your Attorney, it must be registered with the Office Of The Public Guardian.

Either the Donor or your Attorney can apply to register the Lasting Power of Attorney.

Once a Property and Financial Affairs Lasting Power of Attorney has been successfully registered it can be used straightaway. With a Health and Welfare Lasting Power of Attorney then after it has been successfully registered it can only be used once the Donor has lost the mental capacity to make decisions.

When to register

A Lasting Power of Attorney does not have to be registered straightaway. The Donor might prefer to wait until the Lasting Power of Attorney is actually needed to be used. However, it is often best to register the Lasting Power of Attorney as soon as possible so as to avoid delays later on in the process.

Registering the Lasting Power of Attorney early means that any mistakes or errors can be identified and corrected by the Office of the Public Guardian. If a Donor delays registering the Lasting Power of Attorney and find there are errors then they may no longer have the mental capacity to prepare a new Lasting Power of Attorney.

Timescales

Currently it takes about 3 months for the Office of the Public Guardian to process a Lasting Power of Attorney application.

There has to be a minimum period of 6 weeks to allow the people who have been chosen to be notified to have the chance to raise any objections to the Lasting Power of Attorney.

The rest of the registration period is spent by the Office of the Public Guardian checking the application and making sure everything is acceptable and there are no problems.

Objecting to the registration of a Lasting Power Of Attorney



Who can object?

There are three categories of people who can object to a Lasting Power of Attorney:

1. The Donor;
2. The Attorney;
3. The persons nominated and named in the Lasting Power of Attorney.

During the registration process the Office of the Public Guardian will contact a person if they have the right to object and will provide information of how they can make their objections (if any).

Reasons to object to The Office Of The Public Guardian:

There are many different reasons why an objection could be made to the Office of the Public Guardian. These might include the following:

1. The Donor or your Attorney dies;
2. The Donor or your Attorney are declared bankrupt;
3. The Donor or your Attorney does not have sufficient mental capacity to make decisions;
4. The Donor or your Attorney does not want to be appointed;
5. The Attorney is a trust corporation that no longer exists.

Reasons to object to The Court Of Protection

There are certain circumstances when it might be necessary to raise an objection to the Court of Protection, these include:

1. The Donor does not have sufficient mental capacity to make a Lasting Power of Attorney;
2. The Attorney will not act in the Donor's best interests;
3. That fraud or unfair pressure has been used to persuade or force the Donor to make a Lasting Power of Attorney;
4. The Donor cancelled the Lasting Power of Attorney when they had insufficient mental capacity.



Acting in best interests and Gifting

Best interests

When acting as an Attorney on behalf of the Donor an Attorney must always act in the Donor's best interests. The Attorneys must always follow the principles of the Mental Capacity Act 2005.

These include: -

- The Attorneys must always act in the Donor's best interests;
- The Attorneys must assume that the Donor can make their own decisions, unless it is established that the Donor cannot do so;
- The Attorneys must help the Donor to make as many of their own decisions as they can;
- The Attorneys must not treat the Donor as being unable to make a decision simply because they make an unwise decision;
- Before the Attorneys make a decision for the Donor they must consider whether they can make the decision, or act in a way that is less restrictive to a Donor's rights and freedom.

Gifting within Section 12 (2) MCA 2005

Gifting is something which can be done with a Property and Financial Affairs Lasting Power of Attorney. As with all things, there are of course conditions to this.

Gifting can only be done in the following circumstances:

- A specific gift or gift occasion is expressly stated when the Lasting Power of Attorney is created;
- On customary occasions (such as birthdays, anniversaries, Christmas etc.) to persons (including themselves) who are related to, or connected with the Donor; or
- To any charity to which the Donor made or might have been expected to make gifts;
- The value of the gift is not unreasonable having regard to all circumstances, in particular the size of the Donor's estate.

Customary occasions

Customary occasions mean any occasion where it is customary for presents to be given among family and friends. Examples include, birthdays, anniversaries etc.

Gifting outside Section 12 (2) MCA 2005

If an Attorney wishes to gift outside of the parameters described above, maybe as a gratuity, or in the circumstances of Inheritance Tax Planning, then an application to the Court of Protection must be made to authorise such a gift.



STEP and Solicitors For The Elderly



We at Seatons Solicitors are proud members of the Society of Trust & Estate Practitioners (STEP) and Solicitors for the Elderly (SFE).

What is STEP?

STEP is a global professional association for practitioners. They help to improve the public's understanding of the issues that families may face in the area of family inheritance and succession planning.

What is SFE?

The Solicitors for the elderly (SFE) is a national organisation of Solicitors, Barristers and Legal Executives who are committed to providing high-quality legal services for older people, their families and their carers.

In order to join as an associate member it requires a number of years' experience advising older people and an examination. They must also comply with our Code of Practice, so you can be confident about the services you receive.

What do we do?

At Seatons, we draft Wills and Trusts, administer estates, act as Trustees and advise families on how best to structure their finances to ensure compliance and preserve their assets.

This could be:

- Advice on following a partner's death, while protecting the interests of their children;
- The elderly or vulnerable relatives are cared for and well supported;
- Helping to ensure compliance with the laws and tax rules of different countries;
- Family businesses passing safely from one generation to another;
- Clients who are supporting charitable causes in an effective way.

Other legal services we offer

For more information about Seatons Solicitors, visit our website at www.seatons.co.uk.

Packed with information and additional material on all the legal services we offer, Seatons' website gives you access to a variety of different legal guides that you can download. Listed below are just some of the other services we provide.

Personal injury & accident claims

Been involved in an accident? We can work on a no win no fee basis.

Court Of Protection services

Have you ever considered what would happen to your home and savings if you became ill?

Family Law & matrimonial services

Our skilled Family Law team handle a wide variety of legal issues surrounding families, children and partners.

Probate & Estate administration services

We handle estates in an efficient and sympathetic manner.

Wills

We are a firm who specialise in creating and preparing Wills. We provide personal tailored advice to you.



Glossary of terms

• Advance Decision To Refuse Treatment

Sometimes people have clear views about what types of medical treatment they don't want to have and would not consent to. An advance decision allows them to express these views clearly before they lose mental capacity. They can specify that it is to apply even if life is at risk.

• Attorney

Someone appointed under either a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA) who has the legal right to make decisions within the scope of their authority on behalf of the person (the Donor) who made the Power of Attorney.

• Best Interests

Any decisions made or anything done for a person who lacks capacity to make specific decisions must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests. These are set out in section 4 of the Mental Capacity Act.

• Capacity

The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Mental Capacity Act.

• Court of Protection

The specialist Court for all issues relating to people who lack capacity to make specific decisions.

• Deputy

Someone appointed by the Court with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Mental Capacity Act.

• Enduring Power of Attorney (EPA)

A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an Attorney to deal with the Donor's property and financial affairs. Existing EPAs will continue to operate under Schedule 4 of the Mental Capacity Act, which replaces the EPA Act 1985.

• Independent Mental Capacity Advocate (IMCA) Service

The Independent Mental Capacity Advocate (IMCA) service is a statutory service established under Section 35 of the Mental Capacity Act.

The purpose of the IMCA service is to help particularly vulnerable people who lack mental capacity to make important decisions about serious medical treatment and changes of accommodation, and who have no-one that it would be appropriate to consult about these decisions.

• Lasting Power of Attorney (LPA)

A Power of Attorney created under the Mental Capacity Act (see Section 9(1)) appointing an Attorney to make decisions about the Donor's personal welfare (including healthcare) or deal with the Donor's property and affairs.

• Office of the Public Guardian (OPG)

The Public Guardian is an officer established under Section 57 of the Mental Capacity Act. The Public Guardian will be supported by the Office of the Public Guardian, which will supervise Deputies, keep a register of Deputies, Lasting Powers of Attorney and Enduring Powers of Attorney, and investigate any complaints about Attorneys or Deputies. The Office of the Public Guardian replaces the Public Guardianship Office (PGO) that has been in existence for many years.

• Personal welfare

Personal welfare decisions are any decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity. Many acts of care are to do with personal welfare.

• Property and Affairs

Any possessions owned by a person (such as a house or flat, jewellery or other possessions), the money they have in income, savings or investments and any expenditure. Attorneys and Deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.



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