



What is an Attorney's role in a Lasting Power of Attorney?

This means you can help make decisions about someone's money and health or make decisions on someone's behalf if they appointed you as their attorney. The person who appoints you is called the 'donor'. You can be an attorney if you're 18 or over and you're able to make your own decisions. You can't be a property and financial affairs attorney if you're subject to a Debt Relief Order or bankrupt.

Before you can use the lasting power

You or the donor must register the lasting power of attorney (LPA) before you can start making decisions.

Acting as an attorney

There are 2 types of LPA. Your responsibilities depend on whether you're the donor's:

- property and financial affairs attorney
- health and welfare attorney

Any decision you make on the donor's behalf must be in their best interests. You won't be paid for acting as an attorney unless the donor has said in their LPA that they will pay you a fee.

How you're appointed

The donor will ask you to be their attorney. If you agree, you'll need to sign their lasting power of attorney (LPA) form.

They may appoint one or more other attorneys. The LPA will say how you have to make decisions if there are other attorneys.

Making decisions if there's more than one attorney

Check whether you must make decisions:

- 'jointly and severally' - which means you can make decisions on your own or with other attorneys
- 'jointly' - which means you and all the other attorneys have to agree on a decision

The donor may give instructions for you to make some decisions 'jointly' and others 'jointly and severally'. Attorneys who are appointed jointly must all agree or they can't make the decision.

Replacement attorneys

Replacement attorneys are chosen when someone is making a lasting power of attorney (LPA). They step in if one of their original attorneys can no longer make decisions on their behalf.

As a replacement attorney, you may have to take the place of an original attorney if they:

- have died
- get divorced from the donor or end their civil partnership
- lose mental capacity
- decide to stop being an attorney - sometimes called 'disclaiming' or 'revoking' an attorneyship
- become bankrupt or subject to a debt relief order – this only applies to property and financial affairs LPAs

You'll be responsible for making decisions about the same thing as the attorney you replace. Where there's more than one replacement attorney, the donor may have specified the order in which they should step in.

Start using the lasting power of attorney

All lasting powers of attorney (LPAs) need to be registered before you can use them.

If there are no mistakes or objections when you register, your LPA will be stamped 'registered' on every page. You can then use it to prove you're the attorney.

When you can start making decisions on behalf of the donor depends on whether you're a:

- property and financial affairs attorney
- health and welfare attorney
- replacement attorney

Property and financial affairs

You can start helping the donor make decisions about their property and money immediately if they give you permission. If they don't give you permission, you can only make a decision when the donor lacks the capacity to make it.

Health and welfare

You can only make a decision about the donor's health and welfare if they don't have the capacity to make it.

Assessing someone's mental capacity

Even if the donor can't make a decision at a certain time, they may be able to:

- make it at another time
- make decisions about other things

You must help the donor make decisions where they still have mental capacity.

Property and financial affairs attorneys: duties and powers

When you start making decisions as a property and financial affairs attorney, you're responsible for helping to manage or managing things like the donor's:

- money and bills
- bank and building society accounts
- property and investments
- pensions and benefits

Follow the donor's instructions about what to do or, if they've lost capacity, check the lasting power of attorney (LPA) form to see if the donor has listed:

- restrictions on what you can do
- guidance on how they want decisions to be made

How to manage the donor's finances

You must manage the donor's finances in their best interests. Keep the donor's finances separate from your own, unless you've got a joint bank account or own a home together. If you do, tell the bank or mortgage company you're acting as the other person's attorney. You must keep accounts of the donor's assets, income, spending and outgoings. The Office of the Public Guardian (OPG) and the Court of Protection can ask to check these.

You may be prosecuted if you misuse the donor's money.

Gifts - You can buy gifts or give gifts of money on behalf of the donor, including donations to charities. You must only make gifts:

- to people who normally receive gifts from the person
- on suitable occasions, eg birthdays, weddings
- to charities that normally receive donations from the person

Buying or selling property - You can buy or sell property on the donor's behalf if it's in their best interests. If you're selling the donor's home and the donor has a health and welfare lasting power of attorney (LPA), you may need to discuss with them where the donor is going to live.

Wills

You can't make or change a will on behalf of the donor. You can apply to the Court of Protection for a 'statutory will' if the donor needs to make a will, but lacks capacity to do it themselves.

Health and welfare attorneys: duties and powers

As a health and welfare attorney, you can make decisions about the person's:

- daily routine, eg washing, dressing, eating
- medical care
- living arrangements, eg whether they live at home or move into a care home

Check the lasting power of attorney (LPA) form to see if the donor has listed:

- restrictions on what you can do

- guidance on how they want decisions to be made

Decisions about where the donor will live

You can't sell or buy property on the donor's behalf unless you're also their property and financial affairs attorney.

Decisions about treatment to keep the donor alive

You can't make decisions about giving the donor treatment which will keep them alive unless they gave you permission in their LPA. The donor may also have made an advance decision, sometimes called a 'living will'. This is a legal statement about which medical treatments they do not want. It's not part of their LPA, but you'll need to consider it as well.

Payment and expenses

Unless you're a professional attorney, you won't normally be paid for being someone's attorney.

Expenses

You can claim expenses you've had while carrying out your duties as an attorney, for example:

- travel costs
- stationery
- postage
- phone calls

Keep your receipts and invoice the donor for your expenses.

Stop acting as an attorney

You'll stop acting as the donor's attorney if:

- the donor dies - the lasting power of attorney ends automatically
- you choose to stop being an attorney - sometimes called 'revoking' or 'disclaiming' an attorneyship
- you lose mental capacity and can't make decisions any more
- you become bankrupt or you're subject to a debt relief order - if you're a property and financial affairs attorney

If you stop you'll need to fill in forms and provide documents depending on the circumstances.

The donor dies

You'll stop being an attorney as soon as the donor dies.

