

LPA Pack

Lasting powers of attorney for:

- Property & finance
- Health & welfare

Peace of mind for generations of families and businesses

www.ts-p.co.uk

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Lasting power of attorney (LPA) pack

Contents

1. LPAs – fees
2. LPAs – summary
3. Acting as certificate provider for an LPA
4. Registration of an LPA
5. Instruction form

The LPA pack has been developed by Thomson Snell & Passmore to make it easier for you to put LPAs in place, and to allow us to quote the fixed fees detailed inside.

If you would like to take advantage of this convenient way of making an LPA, or simply require additional information, please call us on **01892 510000**.

“

Excellent. Quite personal.....explaining everything in words and language that I could understand and keeping me up to date.

”

Client

Lasting Power of Attorney - fees

1. Our fees (excluding VAT) for advice on, preparation and registration of LPAs are as follows:

Preparation of LPAs:

- One type of LPA for you £ 595
- One type of LPA for you and also for your spouse or partner £ 825
- Both types of LPA for you £ 825
- Both types of LPA for you and also for your spouse or partner £1,080

Acting as Certificate Provider:

- For one type of LPA for you £ 170
- For both types of LPA for you £ 275
- For one type of LPA for you and your spouse or partner £ 275
- For both types of LPA for you and your spouse or partner £ 325
- For arranging for your Doctor or other professional to act as your certificate provider £ 195

Registration of LPAs (if registered at the time of preparation):

- Registration of one type of LPA for you £ 220
- Registration of both types of LPA for you or registration of one type of LPA for both you and your spouse or partner £ 285
- Registration of both types of LPA for you and also for your spouse or partner £ 420

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Lasting Power of Attorney - fees

Continued

Registration of LPAs (if NOT registered at the time of preparation):

- Registration of one type of LPA for you **£ 370**
- Registration of both types of LPA for you or registration of one type of LPA for both you and your spouse or partner **£ 490**
- Registration of both types of LPA for you and also for your spouse or partner **£ 595**

Providing certified copies of LPAs (to you or your attorneys):

- At a later date – first two copies **£ 370**
- At the time of registration or further certified copies at a later date – per copy **£ 35**

2. Fees quoted are valid for 30 days from receipt of this schedule.
3. The fees for registration do not include any additional advice given and time spent in dealing with any objections raised on registration of an LPA by the Office of Public Guardian or others. This and any other advice not within the above will be charged on the basis of time spent at a specified hourly rate with your prior authorisation.
4. An application fee of **£82** is payable to the Office of the Public Guardian for each LPA to be registered.
5. Fees do not include VAT, which will be charged at the standard rate.
6. Our full Terms of Business will be supplied on request or when confirming your instructions to proceed.

For further information or to book an appointment to discuss your requirements and next steps please contact us on **01892 510000**.

Lasting Powers of Attorney - summary

The donor and the attorney

A lasting power of attorney (LPA) is used by one person (the donor) to give authority to another person (the attorney) to make certain decisions on behalf of the donor. An LPA can be used when the donor is no longer able, or lacks mental capacity, to make decisions.

There are two types of LPA:

- 1 A property and financial affairs LPA, which allows the attorney to deal with the donor's property and finances. This can include selling property, closing bank accounts, access to the donor's financial information and dealing with the donor's tax affairs. This type of LPA can be used once it has been registered, even if the donor still has capacity to make decisions themselves.
- 2 A health and welfare LPA allows the attorney to make welfare and health care decisions on the donor's behalf, but only when the donor lacks the mental capacity to do so themselves. These decisions can include where the donor should live, decisions regarding medical treatment and the donor's day-to-day care.

Who can be an attorney

Any person over eighteen may be appointed as an attorney under an LPA. (An attorney who is a bankrupt cannot be appointed as attorney in relation to the donor's property and affairs, but can be in relation to the personal welfare of the donor.)

The role of an attorney is an important one and carries a great deal of responsibility. It

is therefore important that attorneys are chosen carefully and understand their responsibilities in law as to how and when they make decisions.

Limiting the types of decision an attorney can make

Certain decisions are beyond the scope of what can be done by an attorney. For example, a health and welfare LPA cannot be used if the donor has capacity to make the decision in question; a property and financial affairs LPA cannot be used to make gifts except to the limited extent permitted by the Mental Capacity Act.

It is possible to set out further limits on the decisions an attorney can make by specifying this in the LPA itself. A property and financial affairs LPA can specify that an attorney cannot act until the donor lacks capacity to make decisions. Otherwise an attorney will be able to act as soon as the LPA is registered, although if the donor still has capacity, the attorney must consult with the donor before making any decisions. A health and welfare LPA may prevent the attorney from giving or refusing consent to life sustaining treatment.

Attorneys must act in the best interests of the donor at all times

The attorney must always act in the best interests of the donor. This requires consideration of the donor's past and present wishes and feelings, beliefs and values. For example a donor may wish to specify that certain relatives are consulted over an important decision such as the sale of the family home. These may be recorded in the LPA itself. Attorneys are accountable to the Court and may be called upon to

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Lasting Powers of Attorney - summary

Continued

justify their decisions if there is evidence that they have failed to take account of the donor's wishes.

There can be more than one attorney

If there is more than one attorney the donor must decide whether the attorneys are to act jointly, meaning every decision must be made together, or jointly and severally, allowing a single attorney to make a decision if the others are not available.

The donor can specify replacement attorneys

The donor can specify replacement attorneys in the LPA. For example, a donor may appoint his or her spouse as attorney and a son or daughter as a replacement attorney if the spouse should die or become unable to act.

Procedure for making an LPA

As the LPA gives the attorney control over the donor's property, there are a number of safeguards to protect the donor.

Certain people may be notified before the LPA is registered.

The donor may name up to five people to be notified when an application is made to register the LPA. This enables the named people to raise objections if they have any concerns regarding the LPA.

Although this safeguard is optional, it is always advisable for a donor to inform close relatives and professional advisers of the LPA.

The donor must choose an independent person to provide a certificate of capacity

The certificate provider is chosen by the donor and must be either:

- 1 Someone the donor has known personally over the last 2 years. This must be more than just a passing acquaintance.
- 2 Someone who has relevant professional skills. This includes registered healthcare professionals including a GP, a registered social worker, an Independent Mental Capacity Advocate, a barrister, solicitor, advocate or any other person who certifies that they possess the relevant professional skills and expertise to provide a certificate.

The following cannot be a certificate provider:

- an attorney of the LPA or any other power of attorney made by the donor
- a family member of the donor
- a family member of the attorney
- a director or employee of a trust corporation acting as an attorney
- a business partner or employee of the donor, or of the attorney
- an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed or a family member of such a person.

Lasting Powers of Attorney - summary

Continued

A certificate provider confirms the donor:

- understands what an LPA is and understands the contents of the LPA;
- understands what powers the donor is giving to the attorney in the LPA;
- is not being pressured, tricked or placed under duress by someone else to make the LPA; and
- that there is nothing else that would prevent the LPA in question being created.

The certificate provider certifies this when signing the LPA. The certificate provider can be called to justify an assessment at a later date if there are concerns that any of these requirements have not been satisfied.

The signatures of the donor and attorney must be witnessed.

The certificate provider can also act as a witness to the LPA. The donor and attorney cannot act as witnesses for each other but the attorneys can witness each other's signatures.

The LPA must be registered with the Office of the Public Guardian (OPG) before it can be used

The LPA can be registered any time after it is signed and cannot be used until it has been registered. The benefit of registering the LPA shortly after it is made is that it will be ready to be used whenever it is needed. The registration process can take up to two months and the attorneys cannot use the power while awaiting registration to be completed.

If an application to register the LPA is made a long time before it is needed the donor should review it from time to time to make sure it is still relevant to his or her circumstances. However, the donor cannot make changes to an LPA once registered. To make changes (e.g. change the scope of its powers or appoint new attorneys) a new LPA would need to be completed.

The OPG charges a fee of £82 for each application to register an LPA. However, if the donor's gross annual income is less than £12,000, they may be eligible for a 50% reduction of the fee. In addition, if the donor receives any of the following **means-tested benefits** when an application to register is made, they can apply for an exemption:

- 1 Income Support
- 2 Income-based Employment and Support Allowance
- 3 Income-based Jobseeker's Allowance
- 4 Guarantee Credit element of State Pension Credit
- 5 Housing Benefit
- 6 Council Tax Reduction/Support – also known by other names (not the 25% single person discount or the Class U exemption)
- 7 Local Housing Allowance
- 8 A combination of Working Tax Credit and at least one of:
 - Child Tax Credit
 - Disability Element of Working Tax Credit

Lasting Powers of Attorney - summary

Continued

- Severe Disability Element of Working Tax Credit

Not included: Disability Living Allowance, Invalidity Benefit, Personal Independence Payment.

Exception

If the donor has been awarded **personal injury damages of more than £16,000** which were ignored when they were assessed for one of the above benefits, they won't qualify for exemption.

The OPG may investigate attorneys and involve the Court of Protection

In the majority of cases, attorneys act lawfully and with no outside supervision. Occasionally however, attorneys act improperly or concerns are raised by relatives, social workers or other professionals. They can report their concerns to the OPG who have authority to investigate attorneys and obtain accounts and records from them. If they have acted improperly, an application may be made to the Court of Protection for their removal.

The Court of Protection has ultimate jurisdiction to make decisions for persons who lack capacity, and which are in their best interests. Thus where there is conflict or uncertainty over whether a certain decision should be made, or a decision is needed which is beyond the scope of an attorney's authority, then an application should be made to the Court of Protection.

Conclusion

An LPA enables a person to plan ahead and choose the right persons to make decisions that may need to be taken at a time when he or she cannot make them. This may be a time when decisions cannot be made in person and need to be entrusted to someone else, or at a time of stress and vulnerability. In the absence of a properly appointed attorney, bank accounts (including joint accounts where one account holder has lost mental capacity) and other savings will be frozen. Access to funds will only be possible on the appointment of a deputy by the Court of Protection. That involves a lengthy and often costly procedure, which is avoided by the appointment of attorneys.

Having an LPA registered and ready for use can allow decisions to be made quickly if the donor loses capacity and can help avoid disputes as to who should make decisions and what the donor's preferences would have been had the donor not lost capacity.

Why Thomson Snell & Passmore

We have a great deal of experience in this area of practice. We have looked after the affairs of our clients for generations and frequently act as attorneys and deputies for clients who lack capacity. We have one of a handful of dedicated teams of lawyers in the country specialising in Court of Protection work, acting for deputies, attorneys and relatives in all aspects of Court of Protection proceedings, including contested applications for the replacement of attorneys or deputies, the making of settlements, gifts and Wills.

Lasting Powers of Attorney - summary

Continued

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

The law is stated as at 30 June 2021.

If you require further information, please discuss with your usual contact in the firm or email Una Angus at una.angus@ts-p.co.uk

Alternatively, please speak with Una or another member of the Private Client team on 01892 510000.

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Acting as a certificate provider for a Lasting Power of Attorney

Introduction

one of the requirements in making a Lasting Power of Attorney (LPA) is for the document to be countersigned by an independent person (the certificate provider) chosen by the donor (the person granting the LPA) to confirm that in his or her opinion:

- 1 the donor understands the purpose of the LPA and the scope of the authority being given to the attorney(s);
- 2 the donor is not under any undue pressure or duress to make the LPA or has not been tricked into making it; and
- 3 there is nothing else that would prevent a valid LPA from being created.

Who can act as a certificate provider?

There are two types:

Knowledge based

This is someone who knows the donor personally and has done so for a minimum period of two years.

Skills based

This is a person the donor believes has the relevant professional skills and expertise to provide the certification. A skills based certificate provider would normally make a charge for their services, and could be one of the following:

- a registered healthcare professional such as a GP
- a registered Social Worker
- a Barrister, Solicitor or Advocate

- an Independent Mental Capacity Advocate
- any other person who considers they have the relevant professional skills and expertise to be a certificate provider.

Certain categories of person cannot act as a certificate provider and when completing the certificate you will be confirming that you are not prevented from acting in this role. The following persons cannot act as a certificate provider:

- an attorney under the LPA or any other power of attorney made by the donor
- a family member of the donor
- a family member of the attorney
- a director or employee of a trust corporation acting as an attorney
- a business partner or employee of the donor, or of the attorney
- an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed or a family member of such a person.

The responsibilities of the certificate provider

As a certificate provider you need to assess the donor's capacity to understand the importance of the document he or she is signing and the extent of the powers given by it. If, for any reason, the validity of the LPA is challenged, you may be called on by the Office of the Public Guardian or the Court of Protection to justify your opinion.

You therefore need to be satisfied that the donor has, when signing his or her part of the document, understood the purpose and scope of the LPA. Your role is not to provide an exhaustive analysis of the LPA

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Acting as a certificate provider for a Lasting Power of Attorney

Continued

or to give advice, but to satisfy yourself that the essential characteristics of the LPA are understood by the donor and that the document is being made free of any undue pressure or fraud.

It is advisable to ask the donor open questions about the LPA, such as why it is being made, the choice of attorneys and what the attorneys may or may not do. Questions that you may wish to ask are:

- What is your understanding of the LPA?
- What sort of LPA is this (property and financial affairs or health and welfare)?
- Who are your attorneys and why have you chosen them?
- When can your attorneys act and what are their powers?
- How should your attorneys act (where there are more than one) and do you understand the difference between acting jointly and jointly and severally?
- Are there any decisions you do not wish your attorneys to take?
- What preferences or instructions have you included?

It would be wise for a certificate provider, especially if acting in a professional role, to keep a record of the questions asked and to keep a note of the responses given.

Steps to be taken

The donor must first execute his or her part of the LPA by signing and dating the document in the presence of an independent witness (who can be the certificate provider).

You must then read the Certificate Provider's statement and satisfy yourself that you can comply with the requirements

set out in the form both as to your status as a certificate provider and as to your understanding of the donor's capacity and freedom to act.

You should then complete the box provided showing your name and address and then sign and date the certificate. The document does not require you to state the capacity in which you are making the certificate and it is therefore advisable that you provide the donor or the donor's solicitor with a letter or other record of your status. For example if you have known the donor in a personal capacity, you should record how long you have known the donor. If you are acting in a professional capacity, you should record your qualifications.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. If you have any concerns about the donor's capacity or freedom to act then you must seek specialist advice. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

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If you require further information, please discuss with your usual contact in the firm or email Una Angus at una.angus@ts-p.co.uk

Alternatively, please speak with Una or another member of the Private Client team on 01892 510000.

Information

Registration of a Lasting Power of Attorney

Introduction

Before either a property and financial affairs Lasting Power of Attorney (LPA) or a health and welfare LPA can be used it must be registered with the Office of the Public Guardian (OPG). The registration process can take place any time after the LPA has been completed by the donor and attorneys.

However, if the LPA has not yet been registered and an urgent decision needs to be made on behalf of the donor, it may be necessary to apply to the Court of Protection for an Order on that decision. This will entail the payment of a fee.

The application to register an LPA may be made either by the donor or the attorneys. It is necessary to make separate applications to register a property and financial affairs LPA and a health and welfare LPA. An OPG registration fee is payable in respect of each LPA.

Donors applying to register an LPA

The donor does not have to give notice to the attorneys of the intention to register. Although it would be sensible to discuss the intention with them, the OPG formally notifies the attorneys of the application in any event. The donor also needs to notify the people to be told if any are listed within the LPA.

Registration of LPAs by attorneys

Where an LPA is being registered by attorneys appointed jointly they must apply together. If the attorneys are appointed jointly and severally, then any one of them may make the application. The OPG will give formal notification to the donor of the

application as well as to any attorneys who have not applied to register.

The attorneys need to notify the people to be told if any are listed in the LPA. Once all of the necessary documents have been lodged with the OPG a registration date is set. This will be four weeks from the date that the OPG gives notice to any persons who did not join in the application to register.

Once the documents are lodged the OPG will set a registration date four weeks from the date that the OPG sends out notification to the attorneys.

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