

What is an LPA?

An LPA is a legal document which allows someone, an 'Attorney', to assist or make decisions on someone else's behalf. There are two types of LPA to consider and they have very different purposes. Neither type can be used until registered with the Office of the Public Guardian:

A Property & Affairs LPA allows the Attorney to assist in making decisions regarding property and finances.

A Health & Welfare LPA, although registered, cannot be used until the person who made it is no longer able to make their own decisions. When it does become effective, it allows the Attorney to make decisions about where someone lives and the type of care they need. If the person who made it chooses, the Attorney can also make decisions about life sustaining treatment.

Who can be an Attorney?

An Attorney is someone who has a considerable amount of power over someone else's affairs. They must therefore have the necessary skills and ability to carry out the role. In addition they must be extremely trustworthy.

Donors, the people that make the LPA, often choose their children, their spouse or a close friend (or a combination of these). Attorneys must be at least 18 years of age.

What if there is more than one Attorney?

An Attorney may be required to act alongside one or more other appointed Attorneys. Where this is the case the LPA will say how the Attorneys must work together:

- If they are appointed 'jointly' they must always all agree on all decisions and all sign any necessary documents eg: cheques
- If Attorneys are appointed on a joint and several basis then they can act together or independently

- Sometimes Attorneys may be appointed to act together for some decisions and independently for others. For example, day to day running of bank accounts on an independent basis but selling property might be on a joint basis

- Replacement Attorneys can also be appointed

The decision rests with the donor and the LPA document explains how the Attorneys have been appointed.

What are the duties of an Attorney?

The powers, responsibilities and legal duties of an



Attorney are set out in the Mental Capacity Act 2005 (MCA) and its Code of Practice. A copy of the Code of Practice can be obtained from www.direct.gov.uk.

If you have been asked to be an Attorney you must pay attention to the Code of Practice as you will be under certain legal duties. Attorneys acting under an LPA have a duty to:

- follow the statutory principles laid down in the MCA
- make decisions in the donor's best interests
- have regards to the guidance in the code of practice
- only make decisions that the LPA authorises

Other duties:

An Attorney is a role which carries a great deal of power; they have a duty:

- to apply certain standards of care and skill
- to carry out the donor's instructions
- not to take advantage of their position to benefit themselves (this is called a fiduciary duty)
- not to delegate decisions, unless authorised to do so
- to act in good faith, with honesty and integrity
- to keep the donor's affairs confidential unless there is good reason not to
- to comply with the directions of the Court of Protection
- not to give up the role of Attorney without informing the donor and the Court

Where the Attorney is acting under a Property & Affairs LPA they also have a duty:

- to keep accounts of transactions carried out on behalf of the donor
- to keep the donor's money and property separate from their own

What decisions can an Attorney make?

If the donor does not restrict the decisions then under a Property & Affairs LPA an Attorney's decisions might include:

- buying/selling property
- opening, closing or operating a bank or building society account
- claiming/receiving the donor's benefits
- receiving any income or monies on behalf of the donor
- dealing with the donor's tax affairs
- paying the donor's bills and household expenses
- investing the donor's savings
- arranging payment medical care/residential or nursing home and taking appropriate advice
- applying for any funding entitlements for care requirements
- buying a vehicle or necessary equipment for the donor

- repaying any loans the donor has
- making certain gifts (subject to the limitations stipulated in the MCA)

What restrictions are placed on an Attorney?

The attorney's job is to **help** the donor make decisions, not to make that specific decision for them, unless they believe the donor lacks capacity. The Attorney must not hamper the donor in their decision making process.

Before you agree to act as an Attorney think carefully about the role and responsibilities outlined above. We also suggest that you read the Code of Practice. Remember you may not need to act as an Attorney until the donor has lost mental capacity.

There is help at hand too; our solicitors act as Attorney's for clients and advise Attorneys acting on behalf of donor's who have lost capacity. If you would like to discuss the Attorney role in more detail or need advice on acting in your role as an Attorney call us.

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