



**Wills Estates
& Probate Lawyers**

**WALSH
WEST
LAW**

THINGS TO CONSIDER WHEN MAKING AN LPA – INFORMATION FOR CLIENTS Walsh West Private Client Legal 2021

What do I need to consider when making an LPA?

Choice of Attorney

Consider the following when choosing your 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. (Please give them the appropriate enclosed 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 relationship with them.

They must always act according 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.

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 the 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 instructions (restrictions) on the attorneys you are appointing?

- You may wish to consider restricting the occasions when the attorneys should act for you.
- Such instructions will be legally binding and could cause difficulties.
- If you do, you must be careful that the document can still work. You could have advice on this at our meeting.

Do you want to give your attorneys guidance by way of preferences?

- 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 Health 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 you may wish for it to be made clear that their out-of-pocket expenses should be covered.
- 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 as to the people you choose? Ideally, they should be a person:

- ✓ Who you are likely to have contact throughout your life
- ✓ Who is interested in your best interests and wellbeing
- ✓ 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

Who will be the certificate provider?

You must choose a person to act as your certificate provider. 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.
- 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);



**Wills Estates
& Probate Lawyers**

**WALSH
WEST
LAW**

- 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 two years, or
- Someone who, on account of their professional skills and expertise, considers themselves competent to make the judgements 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 or 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.

For help and advice with Estate Planning including Lasting Powers of Attorney, Wills, Trusts and Probate; call our team on 0203 488 7503, 01992 236 110 or contact us by email at welcome@walshwestcca.com or via our website www.walshwestcca.com