

Registering your Lasting Power of Attorney

Your Lasting Power of Attorney must be registered with the Office of the Public Guardian, otherwise it cannot be used. Registration takes at least four weeks, and if the Office of the Public Guardian raises a query, it can take even longer. If you lose capacity before the document is registered and the Office of the Public Guardian raises a query, they can refuse registration, and your Attorneys will be unable to act on your behalf.

Keeping your documents safe

Your Lasting Power of Attorney must be stored in a safe place, and all relevant parties should know where to access it when it is required. We can provide a safe storage facility for a small annual fee and will issue a certificate detailing the documents held on your behalf.

What's the next step?

Whilst the Court of Protection is essential for safeguarding the interests of people who don't have close family or friends, it is important that if you want your loved ones to be able to care for you and make decisions on your behalf, you should ensure that you make a Lasting Power of Attorney whilst you still have the capacity to do so.

For further information, or to discuss putting a Lasting Power of Attorney in place, please call Eleanor Betts on 0121 663 0975, or email eleanorbetts@thinkwillsandprobate.co.uk



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LASTING POWERS OF ATTORNEY

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A Lasting Power of Attorney will ensure that you and your assets are dealt with as you would wish, in the event you are unable to make decisions yourself, usually due to illness or incapacity. Your spouse, partner, or blood relatives will be unable to act on your behalf without one.

What is a Power of Attorney?

A Lasting Power of Attorney is a legally binding document enabling you to appoint a person or persons of your choice to look after your affairs.

There are two types of Lasting Powers of Attorney:

- Lasting Power of Attorney for Property and Financial Affairs - which allows your Attorneys to deal with all aspects of your financial life on your behalf, including banking, paying bills, loans, savings, investments, pension, tax, benefits and property. This Lasting Power of Attorney is not valid until it has been registered.
- Lasting Power of Attorney for Health and Welfare - which allows your Attorneys to make decisions for you, such as your daily care and where you should live, and can even extend to refusing or consenting to life-sustaining treatment. This Lasting Power of Attorney is not valid until it has been registered and cannot be used until you have lost your mental capacity. (Please see our separate leaflet for further information.)

Why do you need a Lasting Power of Attorney?

Circumstances can change suddenly and dramatically, and if you were to suffer an accident or serious illness which resulted in a long confinement in hospital, or permanent incapacity, without a Lasting Power of Attorney in place, the only way your financial affairs could be managed is by application to the Court for a Deputy. This is an expensive process which can take up to ten months, during which time, no one can access your assets.

Ultimately, the Judge will decide who is appointed as your Deputy, and you have no control over this decision, even if it is an individual you would not have chosen yourself, had the decision been up to you. In some cases, the Judge will also appoint a Panel Deputy, usually a representative from the Office of the Public Guardian, so your family would have the added stress of having to deal with an official every time a decision needed to be made.

In fact, your family would have no authorisation to make any decisions for you, including medical treatment, even if they knew what your wishes were.

Who can make a Lasting Power of Attorney?

Anyone aged 18 years or over and with mental capacity at the time of making it (England and Wales).

Who can act as your Attorney?

Anyone aged 18 years or over, with mental capacity, and who is not a bankrupt at the time of signing the Lasting Power of Attorney. You should appoint someone you know well and trust, such as a relative or a very close friend.

If you have more than one Attorney, you will need to decide whether they should act together for all decisions, independently for some decisions and together for others, or whether they have the flexibility to act both independently and together. There are pros and cons to each option, and we can explain the implications to help you decide what's best for you.

Guidance & Restrictions

You can provide guidance to your Attorneys on how you would want them to act, although this is not legally binding.

However, the 'Restrictions' facility is legally binding and enables you to stipulate any practices or procedures you would want your Attorneys to follow (for example, seeking professional advice in relation to your investments).

Who else is involved in making a Lasting Power of Attorney?

Named Persons. You can select relatives or trusted adults who know you well to raise any concerns or objections about the Lasting Power of Attorney before it is registered. However, under UK law, if you do not choose anybody, you must have two Certificate Providers instead.

Certificate Providers. These are independent individuals who can confirm that you understand the significance of the Lasting Power of Attorney and that you have not been subject to any undue influence or pressure to make it. Ideally, the Certificate Provider will be a legal professional, or your GP can act as an alternative.