

The logo for Pardoes Solicitors is a solid green square. Inside the square, the word "Pardoes" is written in a large, white, serif font. Below it, the word "Solicitors" is written in a smaller, white, sans-serif font.

Pardoes

Solicitors

WILLS, PROBATE AND TAX PLANNING DEPARTMENT

LASTING

POWERS OF ATTORNEY

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POWERS OF ATTORNEY

A General Power of Attorney can be used if you want to appoint people to act on your behalf (as an attorney). However, if you were unable to make decisions for yourself due to mental incapacity, the General Power of Attorney could no longer be used by your attorney(s).

It is no longer possible to make an Enduring Power of Attorney ('EPA') if you want to appoint people to act on your behalf (as an attorney), when you are unable to make decisions for yourself.

Instead it is possible to make two types of Lasting Powers of Attorney ('LPA') documents:

1. LPA for **Property and Financial Affairs**
2. LPA for **Health and Welfare**

1. LPA FOR PROPERTY AND FINANCIAL AFFAIRS

A LPA for Property and Financial Affairs allows you to appoint one or more persons to make decisions on your behalf regarding your property and financial affairs. This could include anything from paying your bills, managing your investments or selling your property.

You can restrict the power as you like and you can also give guidance to your attorney(s) about the way they make decisions. You can appoint attorney(s) to manage your property and finances whilst you have capacity as well as when you lack capacity.

The LPA for Property and Financial Affairs can only be used once the LPA is registered with the Office of the Public Guardian ('OPG').

2. LPA FOR HEALTH AND WELFARE

The LPA for Health and Welfare is a separate document to the LPA for Property and Financial Affairs. A LPA for Health and Welfare allows you to give your attorney(s) the power to make decisions about any or all of your welfare or healthcare matters. For example this could include medical

treatment decisions or decisions concerning your care. You can also give your attorney(s) authority to make day-to-day decisions about your welfare, for example, your diet. You can restrict the power as you like and you can also give guidance to your attorney(s) about the way they make decisions.

If you make a LPA for Health and Welfare you must be clear whether you want to give your Attorneys authority regarding life-sustaining treatment i.e. any treatment that a doctor considers necessary to keep you alive.

The attorney(s) that you appoint to make health and welfare decisions on your behalf can only use their power when the LPA is registered and when you lack the capacity to make the decision for yourself.

WHO CAN BE MY ATTORNEY(S) AND HOW CAN THEY ACT?

Anyone who is aged 18 or over can be your Attorney(s) provided they are not mentally incapable themselves, and they must not be bankrupt. You should know and trust your attorney(s).

You can pay your attorney(s) for their services if you would like them to receive more than reasonable out-of-pocket expenses.

You can appoint more than one attorney if you want to but you can alternatively appoint one attorney solely.

If you chose more than one attorney then you need to confirm how you would like them to make decisions:

Jointly: this means that your attorneys must make all decisions together

Jointly and severally: this means that your attorneys can make decisions together and separately. This might be useful if one of your attorneys is unable to make a decision at a certain time. If one attorney cannot act the remaining attorney is able to continue to make decisions

Jointly for some decisions and jointly and severally for other decisions: this means that your attorneys must make certain decisions together and may make certain decisions separately. You will need to set out on the LPA form how you would like this to work in practice.

REPLACEMENT ATTORNEYS

You can choose one or more replacement attorneys. They will act only once your attorney can no longer act for you i.e. if your attorney does not want to act for you or is permanently unable to act for you.

You do not have to appoint a replacement attorney. However, if you appoint only one attorney and no replacement, your LPA will end if your attorney cannot act.

WHEN DOES THE APPOINTMENT OF YOUR ATTORNEY(S) COMMENCE?

The appointment of your attorney(s) cannot commence until the LPA is registered with the OPG. It is recommended that your LPA is registered upon its finalisation because there is a waiting time for registration with the OPG of approximately two months. In registering your LPA, an application form LPA002 needs to be completed by you, as the donor, or your attorney(s). The current registration fee, to be included in your application, is £120 payable to the OPG or Office of the Public Guardian.

If there is a restriction in your LPA that your attorney(s) cannot act until a certain event happens, for example, if you become mentally incapable of making decisions yourself, then your attorney(s) can only act if such an event happens.

SAFEGUARDS

1. Persons to be told

You can specify persons to be told when your LPA is being registered. The persons that you choose to be told can object to the registration of your LPA, upon being notified.

If you do not choose any persons to be told then you will need to instruct a second certificate provider (see below).

The person that you choose to be told cannot be your attorney(s) or your replacement attorney(s).

2. Certificate Provider Statement

The Certificate Provider Statement must be completed in order for the LPA to be valid.

The Certificate Provider must be **EITHER**:

1. A person who has known the donor for at least two years as more than an acquaintance
2. A person with the relevant professional skills (i.e. a G.P. or a Solicitor)

A Solicitor or Legal Representative from Pardoes Solicitors would be happy to be the Certificate Provider for your LPA. If you have current medical issues with your mental capacity, then it would be advisable that your G.P. or your Consultant is the Certificate Provider of your LPA. We will be able to arrange this for you.

The Certificate Provider's role is to confirm, in their opinion:

1. that you understand the purpose of the LPA and the scope of the authority conferred under it
2. that no fraud or undue pressure is being used to make you create the LPA
3. that there is nothing else to prevent the LPA from being created

3. The duties of your attorney(s)

Your attorney(s) have a duty to keep accounts and financial records for production to the OPG or the Court of Protection, if they are requested to do so. Your attorney(s) must also act in accordance with the principles of the Mental Capacity Act 2005 and its Code of Practice.

WHY MAKE AN LPA?

It is likely that your mental capacity will deteriorate with age, and it may not in the future be sufficient to make vital decisions regarding health, finances and property.

You must have the requisite mental capacity to make a LPA. Without the protection of having a LPA, you or your family and friends may face the costly and lengthy option of a Court of Protection Deputyship Order. Accordingly the LPA can be seen as an insurance policy against a more expensive alternative and the benefits of making clear how your affairs should be managed if you were incapable of making decisions are invaluable

For more information about LPAs or any matters regarding mental incapacity or powers of attorney please contact:

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IF YOU REQUIRE THIS LEAFLET IN LARGER PRINT PLEASE ASK.