



Powers of Attorney explained

You may feel confident that you will never require anyone else's help to deal with your finances or make decisions about where you live. But no one can see into the future and you cannot be sure of these things. A Power of Attorney is a way for you to plan for an unforeseeable and unpredictable future but it can only be prepared whilst you still have mental capacity.

A Power of Attorney is a legal document that you can use to authorise someone else (your Attorney or Attorneys) to manage your financial or personal affairs on your behalf. The document must be set out in a particular format and some Powers of Attorney need to be registered with the Office of the Public Guardian (OPG) before they can be used.

Different types of Power of Attorney

1. General Power of Attorney

This is the simplest type of power and gives limited powers to your Attorneys to manage your finances and usually applies to a particular asset or event, e.g. the sale or purchase of a house.

A General Power of Attorney only needs to be signed by you and as such can be used immediately and does not need to be registered. General Powers of Attorney are usually limited to be effective for a certain amount of time and cannot be used if you later lose mental capacity.

2. Enduring Power of Attorney (EPA)

An EPA can allow your Attorneys to manage your property and finances. It is no longer possible (since October 2007) to create new EPAs, but ones that are already in place remain valid and effective.

EPAs can be used as soon as all the parties have signed the document, unless you have included restrictions, and generally do not need to be registered before use. However, if you lose mental capacity in the future then your Attorneys have a duty to register the document with the OPG before they can continue using it. Registration can take around 2 to 3 months.

An EPA only relates to your property and financial affairs and will not give your Attorneys the power to make decisions regarding your health and welfare. You will need to make a separate Health and Welfare LPA.

3. Lasting Power of Attorney (LPA)

There are two types of LPAs, a Property and Financial Affairs LPA (PFA LPA) and a Health and Welfare LPA (HW LPA).

A PFA LPA can allow your Attorneys to manage your property and finances. This can include managing your bank accounts, paying your bills, making decisions about your investments and selling your property. A PFA LPA can be used by your Attorneys whilst you still have mental capacity if you wish.

A HW LPA can allow your Attorneys to make decisions on your behalf about your health and welfare. This can include decisions about where you live, who visits you and the type of care you receive. It can also allow you to authorise your Attorneys to give or refuse life-sustaining treatment on your behalf. Unlike a PFA LPA, it can only be used when you do not have mental capacity to make your own decisions.

LPAs must be signed by you, your Attorneys and a person referred to as a Certificate Provider and must be registered with the OPG before they can be used. Registration can take around 2 to 3 months.

Quick guide to Powers of Attorney

Type of Power of Attorney	Do I need capacity to prepare one?	Can it be used to make financial decisions?	Can it be used to make welfare decisions?	Can the document still be created?	Does it need to be registered to be used?	Can it be used whilst I have capacity?	Does it continue if I lose capacity?
General Power of Attorney	Yes	Yes	No	Yes	No	Yes	No
Enduring Power of Attorney	Yes	Yes	No	No	No (must be registered if you lose capacity)	Yes (unless there is a restriction)	Yes
Lasting Power of Attorney (Property & Financial Affairs)	Yes	Yes	No	Yes	Yes	Yes (unless there is a restriction)	Yes
Lasting Power of Attorney (Health & Welfare)	Yes	No	Yes	Yes	Yes	No	Yes

What is mental capacity?

'Mental capacity' is the ability to make a **specific decision at the time** that it needs to be made. A lack of mental capacity is when a mind or brain problem stops a person making a specific decision when they need to.

How can Ashtons Legal help?

Our experienced team can help you consider your personal circumstances and advice on the most appropriate power or powers for you. We are experienced in preparing Powers of Attorney and in advising and assisting in their use. We provide practical advice and assistance based on our legal knowledge and first hand experience.

What to do next?

To discuss how we can help you, please contact us

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