

# A Guide to Powers of Attorney



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## Welcome to Succession Wealth

**Our Wealth Planners are here to help you take control of your finances and provide you with the confidence you need to go after the things that matter to you.**

Succession Wealth Management Limited is a large national UK financial advice firm. Our teams of Wealth Planners deliver high quality independent advice to thousands of clients across the UK, and we're committed to helping people achieve more with their money.

Our clients are at the heart of everything we do and looking after their wealth journey is a privilege to us. The relationships we build last longer than a lifetime, and we are proud to provide advice across generations. When you choose to work with us, we promise to provide an exceptional personal service tailored to your unique financial aspirations.

## Preparing in advance of vulnerability and incapacity

It is difficult to comprehend a time when you would ever lose the ability to manage your own affairs, but mental and physical incapacity can happen to anyone at any time. Having a Lasting Power of Attorney (LPA) in place brings many benefits such as appointing people you trust to take control of your affairs, as well as more practical things such as leaving instructions for future decisions about your care and where you would like to live.

The peace of mind an LPA can provide is immeasurable; in this guide we provide an overview of the different LPAs available and some of the benefits they can afford you, along with some of the steps you need to think about when considering an LPA.

In England and Wales, an LPA is a legal document that allows you to appoint one or more people to make decisions on your behalf during your lifetime. There are different types of Powers of Attorney in Scotland, and they're also covered in this guide.

It's not easy to think about a time when you won't be able to make your own decisions, but by being prepared and having plans in place you will have the peace of mind that should that time arise, you already have a trusted individual appointed to carry out your instructions. Getting your affairs in order can be carried out at many different stages of life and will often be motivated by a range of very sensitive personal reasons.

The people you appoint to manage your affairs are called the 'attorneys'. An LPA is a completely separate legal document to your Will, although many people put them in place at the same time as getting their Will written as part of wanting to plan for the future.

Some people may have the misconception that by making a LPA, you are giving away control – in fact, the opposite is true. By preparing in advance of vulnerability and incapacity you are able to appoint who you want to help you, how you want to be helped, and when.



**Choosing an attorney**

Your attorney can be given complete authority over your financial and/or personal affairs, so you should choose someone you trust to make decisions in your best interests. It could be your partner or spouse, a family member, a friend, or a professional such as a solicitor, however you may need to pay a fee to a professional attorney.

You can choose more than one attorney, and you will have to specify whether they can make decisions on their own, if they must all agree before a decision is made, or if they can make some decisions together and others separately.

**During your lifetime**

The LPA has to be registered with the Office of the Public Guardian (OPG). Thereafter, a health and welfare attorney can only act if or when the donor (the person whose LPA it is) loses capacity. A property and financial affairs attorney can act before or after the donor lacks capacity (unless the donor has specified otherwise).

Once you have an LPA in place, you have the peace of mind that there is someone you trust to look after your affairs if you became unable to do so yourself during your lifetime.

Having an LPA in place can allow your attorney to have authority to deal with your finances and property, as well as make decisions about your health and welfare. Your LPA can include binding instructions together with general preferences for your attorney to consider, and it should also reflect any specific or particular wishes so you know that the things that matter most to you will be taken care of.

**Required legal capacity**

You can only put an LPA in place whilst you are capable of understanding the nature and effect of the document (i.e., you have the required legal capacity). After this point, you cannot enter into an LPA, and no one can do so on your behalf.

Many people don't know that their next of kin has no automatic legal right to manage their spouse's affairs without an LPA in place, so having to make decisions on their behalf can become prolonged and significantly more expensive.

**Managing your affairs**

Without an LPA in place, there is no one with the legal authority to manage your affairs; for example, to access bank accounts or investments in your name or sell your property on your behalf. Unfortunately, many people assume that their spouse, partner, or children will just be able to take care of things, but the reality is that this simply isn't the case.

In these circumstances, in order for someone to obtain legal authority over your affairs, that person would need to apply to the Court of Protection, and the Court will decide on the person to be appointed to manage your affairs. The person chosen is appointed your 'deputy'. This is a very different type of appointment, which is significantly more involved and costly than being appointed attorney under an LPA.

If you wish to have peace of mind that a particular person will have the legal authority to look after your affairs, and you want to make matters easier for them and less expensive, then you should obtain professional advice about putting in place an LPA.

## Health and Welfare LPA

This allows you to name attorneys to make decisions about your healthcare, treatments and living arrangements if you lose the ability to make those decisions yourself. Unlike the Property and Financial Affairs LPA, this document will only ever become effective if you lack the mental capacity to make decisions for yourself.

If you can't communicate your wishes, you could end up in a care home when you may have preferred to stay in your own home. You may also receive medical treatments or be put into a nursing home that you would have refused, if only you had the opportunity to express yourself – and this is when your attorney, appointed by the LPA, can speak for you.

An LPA for health and welfare can generally make decisions about matters including:

- Where you should live.
- Your medical care.
- What you should eat.
- Who you should have contact with.
- What kind of social activities you should take part in.

You can also give special permission for your attorney to make decisions about life-saving treatment.

## Property and Financial Affairs LPA

This allows you to name attorneys to deal with all your property and financial assets in England and Wales. The LPA document can be restricted, so it can only be used if you were to lose mental capacity, or it can be used more widely, such as if you suffer from illness, have mobility issues or if you spend time outside the UK.

An LPA for property and financial affairs decisions can cover:

- Buying and selling property.
- Paying a mortgage/rent.
- Investing money.
- Paying bills.
- Arranging repairs to property.

## In Scotland, there are three different types of Powers of Attorney

### 1 — Continuing Power of Attorney

Continuing Power of Attorney enables someone, or more than one person, to look after your property and financial affairs. This could include the power to manage your bank accounts, buy or sell property and claim benefits on your behalf. You can choose whether a Continuing Power of Attorney takes effect straight away so someone can help you to manage your money now, or only if you lose the capacity to make your own decisions later on.

### 2 — Welfare Power of Attorney

Welfare Power of Attorney enables someone, or more than one person, to make decisions about your health and welfare only if you are unable to do this yourself. Welfare powers could include making decisions about where you will live, how you will dress, what you will eat and what medical treatment and care you will receive.

### 3 — Combined Continuing and Welfare Power of Attorney

Combined Continuing and Welfare Power of Attorney enables someone, or more than one person, to look after both your financial affairs and health and welfare decisions.

You may also set up a Simple Power of Attorney. This is usually created for a set period of time or for a specific issue, for example, if you go abroad and would like someone else to be able to make decisions on your behalf while you are away. A Simple Power of Attorney can only be used while you have the mental capacity to make your own decisions and it does not need to be registered with the OPG.

## Contact us

If you would like to discuss this, or any aspect of financial advice with one of our Wealth Planners, feel free to email us at [hello@successionwealth.co.uk](mailto:hello@successionwealth.co.uk) or call us on 0800 051 4659 and we will arrange for someone to contact you.



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Please note, The Financial Conduct Authority does not regulate advice on Estate Planning, Will Writing or Powers of Attorney.

You should seek legal advice to ensure that your Will reflects your wishes and is legally binding.