



A GUIDE TO ACTING AS A CERTIFICATE PROVIDER FOR A LASTING POWER OF ATTORNEY

What is a Lasting Power of Attorney (LPA)?

There are two LPA's that can be made, one that deals with Property and Financial Affairs, and one that deals with Personal Welfare concerns.

An LPA is a document by which one person (the Donor) gives one or more people (the Attorney(s)) authority to manage their financial affairs and property matters, or look after their personal welfare.

LPA forms must comply with requirements set out by the Government, and must be signed by the Donor, a Certificate Provider and the Attorney(s).

Mental capacity

Only the person making a Lasting Power of Attorney (LPA) can instruct solicitors to prepare this document. Solicitors cannot accept instructions on a Donor's behalf. This is because we have to be certain that the Donor has mental capacity, is able to understand and retain information, and fully understand the nature and effect of the LPA.

As part of the LPA the Donor is required to have a Certificate provided by someone who has known them well for over two years or someone professional who can make judgements about their mental capacity at the time of making the LPA. There are restrictions as to who can provide this certificate.

Donors cannot make an LPA if they are not mentally capable and the Donor must choose themselves who provides the certificate.

What is the role of the Certificate Provider?

The Certificate Provider must ensure that the person who wishes to make the LPA is mentally capable of making that LPA and that there is no pressure on them to make one.

The Donor must understand and be able to retain the necessary information in order to be deemed mentally capable within the guidelines of the Mental Capacity Act 2005

If the Certificate Provider is happy that this is the case then the certificate can be signed.

If the Certificate Provider wishes to seek advice on their role they can speak to the solicitor preparing the LPA, as long as the solicitor (or anyone in that firm) is **not** named as an Attorney. If this is the case the Certificate Provider will need to seek independent legal advice.

Who can be a Certificate Provider?

There are two types of Certificate Provider. A **knowledge** based provider, which is someone who has known the Donor personally for over two years, or a **skills** based provider who has the relevant professional skills and expertise to enable them to make a judgement about mental capacity.

For a **skills** based provider the acceptable categories are:

- A registered healthcare professional
- A solicitor, barrister or advocate

- A registered social worker
- An Independent Mental Capacity Advocate (IMCA) or
- Someone not from the above list that can show what their relevant professional skills and expertise in determining mental capacity are

Skills based providers are entitled to charge a fee for providing the certificate.

Who cannot be a Certificate Provider?

You cannot be a certificate provider if:

- You are a member of the Donor's or one of the Attorney's families
- You are a business partner or employed in the same firm as the Donor or an Attorney
- An Attorney in any LPA or old Enduring Power of Attorney made by the same Donor
- The owner, director, manager, or an employee of a care home in which the donor or a family member lives

Duties of the Certificate Provider

As the Certificate Provider your involvement ends once you have provided the certificate. The role of Certificate Provider is a serious and involved task and should not be undertaken lightly. If there are any doubts about whether you feel confident to provide the certificate then you should seek extra advice. There are guides online from the Public Guardianship Office at www.guardianship.gov.uk that you might like to refer to.

The need for a second Certificate Provider

If, when the Donor is making their LPA they do not nominate anyone to be notified when registration of the LPA with the Public Guardianship Office occurs, then a second separate Certificate Provider will also be required. Their role will be the same as the original Certificate Provider and the same restrictions apply.

How to contact us

We welcome enquiries and consultations by telephone, letter and e-mail, or why not call in to one of our offices and ask for further information.



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