

# PENGILLYS

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## Power of Attorney

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# Your guide to Power of Attorney

A Power of Attorney is a legal document that you **the Donor** makes to give someone you trust **the Attorney** the authority to make decisions on your behalf. This is preparation for a time perhaps in the future when you do not have the mental capacity to make decisions to look after your affairs.

**They can only be made** while you still have the mental capacity to do so.

## General Powers of Attorney

These only remain valid while you have mental capacity. They are relatively simple to prepare and are therefore ideal for either lengthy periods of illness or trips abroad, when your affairs still have to be managed, or if you become physically unable to manage your affairs.

## Lasting Powers of Attorney

These have to be registered at the Office of the Public Guardian, who charge a registration fee. If you are in receipt of certain types of benefit you may not have to pay the fee. Lasting Powers of Attorney remain valid whatever your capacity.

There are two types and we recommend both:

### Property and Financial Affairs

Allows your attorneys to make decisions about your property, investments, income and expenditure. These decisions might include but are not limited to:

- buying and selling land, buildings, or other assets
- opening, closing or operating any bank, building society or other account
- claiming, receiving and using all benefits, pensions and allowances on your behalf
- paying bills and dealing with utility providers

It does **not** allow them to make decisions about your health and welfare.

### Health and Welfare

Allows your attorneys to make decisions about your personal care and welfare. These decisions might include but are not limited to:

- the levels of care you require
- whether you can remain in your own home
- if you need residential care – choosing the right home for you
- agreeing to or refusing consent to certain types of treatment
- day to day issues such as diet and daily routines

It does **not** allow them to make decisions about your property and financial affairs.

## Who can make a Lasting Power of Attorney?

Anyone over the age of 18 with the capacity to do so.

No one can make a power of attorney on your behalf, it has to be signed by you.

## Can I appoint more than one Attorney?

You can appoint as many Attorneys as you like, but obviously the more you appoint the more difficult it may be for them to make decisions and can lead to disputes and delays.

It is however important to have more than one Attorney, to avoid the opportunity for abuse and to ensure that should one of the Attorneys become unable to act you have someone else appointed.

### **Attorneys can be appointed:**

- jointly – they must always act together and agree on everything.  
The LPA cannot continue should one of them die
- jointly and severally – can act together or independently, which is an advantage should one of them be unable to act for any reason, or die
- jointly for some decisions and jointly and severally for others

You can appoint replacement Attorneys to take over should your chosen Attorneys become unable to act.

### **What is a Certificate Provider?**

A person who is able to sign to confirm that you understand what you are signing and the consequences of it. This can be a professional or someone who has known you personally for more than two years. It cannot be a family member, one of your Attorneys, employee, business partner or someone involved in the ownership of the care home in which you reside.

### **Can I still make decisions after the LPA is registered?**

**Yes.** Under the Mental Capacity Act you are assumed to have capacity unless it is shown otherwise. You are therefore able to carry on looking after your affairs for as long as you choose or are able to do so.

### **Can I revoke the LPA?**

**Yes.** If you become unhappy with your choice of Attorneys and you still have capacity to do so. The Office of the Public Guardian will need to be notified formally.

### **What you need to know**

LPA's are powerful documents and you need to appoint Attorneys you trust, in addition they must act within the Code of Practice and ensure they always act in your best interests.

Attorneys can be family members or your solicitor.

You can put restrictions and guidance in the documents for your Attorneys.

### **Help with the documentation**

Completing the LPA documents can be quite daunting as there is a lot to consider and put in place. Pengillys can help you to apply for LPA making it simpler for you. Our service includes: preparing the documents and applications for registration, arranging for signatures of appointed people, making the application to the Office of the Public Guardian on your behalf and storing the registered documents for you.

We hope that this short guide has helped you in understanding more about making a Will. We would be pleased to meet with you to discuss any questions that you may have.

**Please call us on 01305 768888**

We will then put you in touch with a member of our experienced Private Clients team.

Please visit [www.pengillys.co.uk](http://www.pengillys.co.uk) where full details of our Private Clients team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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## **Our Offices:**

### **Weymouth**

67 St Thomas Street  
Weymouth  
Dorset DT4 8HB

### **Dorchester**

Challacombe House  
Beechwood Square  
Poundbury  
Dorchester  
Dorset DT1 3SS

## **We can also advise on:**

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