

Mental incapacity is upsetting under any circumstances but it can be doubly so if there are no arrangements in place to guide decisions relating to the affected individual, their property and affairs, including finance and healthcare.

This situation can be avoided by creating a lasting power of attorney.

Power of attorney is a legal process where you grant another person or persons (the attorney) the power to make decisions on your behalf. This can include acting in your financial affairs, dealing with property and making decisions relating to your continuing health and care needs.

The power itself is given as a simple Deed by you, the donor, to the attorney. An ordinary power of attorney can only be given while you continue to be mentally capable of managing your affairs.

Setting up a lasting power of attorney is usually straightforward. However, it is worth taking expert advice to ensure that the wording of the deed is robust and unambiguous. At Morrisons, we can help you with all aspects of setting up a lasting power of attorney, including choosing and appointing attorneys, and ensuring that your wishes are accurately reflected in any documentation, particularly in relation to finance and healthcare.

Lasting power of attorney

What is a lasting power of attorney?

A lasting power of attorney provides authority to continue managing the donor's estate even if he or she has become mentally incapable. There are two types of lasting power of attorney:

- A property and affairs lasting power of attorney, which allows your attorney to deal with your property and financial matters, as you specify
- A health and welfare lasting power of attorney, which allows welfare and healthcare decisions to be made on your behalf, but only when you lack mental capacity to do so; this could also extend, if you wish, to giving or refusing consent to life-sustaining treatment

Who can be my attorney?

- A lasting power of attorney, like any power of attorney, is an important document and you should take care whom you appoint. An attorney should be trustworthy and have appropriate skills for making the proposed decisions.
- You may appoint more than one person to act as attorney. If you appoint more than one attorney, you can appoint them to act together at all times, or to act together and independently in certain specified matters. The decision on which way to operate should only be taken after professional advice, in order to avoid problems arising in the future when using a lasting power of attorney.
- You may also choose to appoint a successor to your attorney, in case the attorney dies or is otherwise unable to act for you. This ensures you create a document that will last.
- How can a lasting power of attorney be used?
- Powers of Attorney can be used in many circumstances: you may be abroad, or suffering from illness or injury; or you may be busy and need someone else to deal with matters. You may cancel a lasting power of attorney at any time if you have the mental capacity to understand the

effect of cancellation.

- A lasting power of attorney will normally only be effective within the United Kingdom, though its authority is increasingly recognised in some foreign countries.

When can the attorney act?

- The attorney will only be able to act when the Lasting Power of Attorney has been signed by you and by everyone who is to act as your attorney.
- Your signature must also be certified by another suitably qualified or knowledgeable person, who can confirm that you understand the nature and scope of the Lasting Power of Attorney and have not been unduly pressured into making the power.
- The lasting power of attorney must then be registered with the Office of the Public Guardian before it can be used.
- A property and financial lasting power of attorney can be used both if you have capacity to act and if you lack mental capacity to make a financial decision. Health and welfare lasting powers of attorney can only be used if you lack mental capacity to make a welfare or medical decision.

What if I have made an enduring power of attorney?

- Enduring powers of attorney were replaced by lasting power of attorney legislation in 2007. However, enduring powers of attorney validly made before 1st October 2007 will continue to be applicable, but only in respect of your property and financial affairs. If you wish to give authority over your health or welfare you will need to make a health and welfare lasting power of attorney.
- What happens if I have not made a lasting power of attorney or enduring power of attorney?
- If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming.
- Most care and treatment decisions can be made on your behalf without the need for a court application. However, you can avoid potential disputes by making a health and welfare lasting power of attorney.

General or ordinary powers of attorney

- Powers of attorney can be used if you are planning to travel abroad, if you are away for long periods of time or find it difficult to complete paperwork.

This type of power of attorney is known as an ordinary power of attorney and gives someone else the power to handle your financial affairs on your behalf. You can enable that person to do anything you would do yourself or you can restrict that power so they are only allowed to do certain things, such as buying or selling a house, or operating a bank account.

- A power of attorney made by an individual can operate for a long period of time. An ordinary power of attorney made by a donor in the capacity of trustee (which includes jointly-owned property) cannot last for more than a year, whereas lasting power of attorney can last indefinitely.