

For Review only

LIM FUNG PEEN

LASTING POWER OF ATTORNEY

Marshall Cavendish Editions

YOUR RIGHTS & OPTIONS

LASTING POWER OF ATTORNEY

A guide to the LPA
and how to set it up

LIM FUNG PEEN

Since 2010, Singapore citizens and permanent residents have been encouraged to utilise the Lasting Power of Attorney, otherwise known as the LPA, to protect their interests but many are still uncertain or unaware about it.

This book seeks to encourage more people to do the LPA by explaining in clear terms how to complete the LPA Form 1. Not just a book about the “what” and “how” of an LPA, it sets out the importance of the LPA, why it is needed and the dire consequences of not having one. It also dispels myths and misconceptions about LPAs.

The book provides interesting case studies of real-life situations to illustrate the function of the LPA, and contains references to other countries and how the LPA and equivalents operate in those jurisdictions.

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*To my late father Lim Jit Cheng
and
my dearest mother Tan Meow Jee*

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FOREWORD

This book is written for the man on the street to help them understand the importance of the Lasting Power Attorney (LPA) and how it is a crucial part of planning for the future for everyone and not just the wealthy, and not forgetting the visually or hearing impaired.

In recent years, conversations about death have become less of a taboo in Singapore. We have begun to accept death as a natural ending to life, and in doing so, have embraced the control and freedom of imagining and expressing how we would like to live out our final years.

An LPA is an expression of our ideals and preferences in what may be our last years of life. It spurs us to question how we would like to live, or how our affairs should be managed, if we can no longer think for ourselves. What do we want? Who would we trust to carry out our wishes?

This is a conversation that we need to have with ourselves sooner rather than later. An LPA can help us frame that conversation. It would provide us with peace of mind and the assurance that our friends and family have heard and understood our wishes,

and would also relieve them of the uncertainty and stress of navigating a complex legal process in times of grief.

Lasting Power of Attorney – A guide to the LPA and how to set it up is therefore an essential read for all, young or old. This book cuts through the legal jargon to make the LPA understandable and accessible to everyone. It is written for the average man who will participate in one or more conversations about sickness or incapacity throughout his life.

Fung Peen's passion for helping people shines through in his writing in this book. He is committed to helping others avoid the difficulties and suffering that so often accompany the departure of a loved one. His years in legal practice have been dedicated to helping families facing legal difficulties, and this book is an extension of his passion and work in guiding others with his wisdom and experience. Writing accessibly and expressively, Fung Peen distils the nuances of the law into clear ideas and processes that are simple and easy to understand.

Through this book, Fung Peen has invited all of us to join a conversation on life, and what it means to us even as we near its end. His clear and thoughtful advice empowers us to help ourselves and our loved ones to document our wishes into an official and recognised process. An LPA no longer has to be daunting or difficult. It is simply an acknowledgement and promise that our wishes have been heard and will be respected.

It has been my honour to write the Foreword for this book, written by one of the kindest and wisest men I know.

Vincent Ooi

*Lecturer of Law, Singapore Management University;
Research Fellow, Centre for Cross-Border Commercial Law in Asia*

PREFACE

Most writers choose which book they would like to write.

In my case, the book chose me.

Despite my initial self-doubt, it did not take too much persuasion from my editor before I agreed to write this book. I hesitated because I was not sure I could carve out the required time to research and write a meaningful and useful book for readers. I was also concerned about writing in a style that would be reader-friendly and not overly technical. After all, the Lasting Power Attorney (LPA) is a legal document.

I believe the LPA is an important document which should be done by everyone, old and not so old, rich and poor, locals and foreigners.

One of the first persons I helped to set up an LPA was my mother a few years ago. Recently, she was diagnosed with early onset dementia, Alzheimer's disease. I know the day will come, sooner rather than later, when my brother and I will have to use the powers that she has given to us in her LPA. I am grateful that my mother agreed to do this. My wife and I have also done

ours, as we did not want to make life harder for each other or our children if either of us loses our mental capacity.

I want to help readers understand that by setting up an LPA, they can avoid the grave inconvenience, unnecessary legal expense, unhappiness and family disputes that can arise when there is no clarity about who should decide for a loved one when they lose their mental capacity. *Doing an LPA is a great way to love your family.*

Writing articles about law related topics was something I enjoyed doing from time to time and I was encouraged by the response from the readers of those articles. A book, albeit a concise one, seemed daunting because I wanted to be as comprehensive as possible and also organise the content in a way that would be make sense to the man on the street.

In these pages, you will find real life stories of what happened to those unfortunate families whose parent, spouse or child did not do their LPA.

Forms can be daunting; what more an 11-page one. I have included tips and samples on how you can navigate your way through the LPA Forms. I also have included an FAQ section for quick reference.

Giving regular talks on the LPA, wills and trusts has helped me to better understand the common misconceptions of the public and helped me to develop a better sense of the FAQs in this area. Being in legal practice for 21 years covering court litigation,

conveyancing and private client matters has also helped me to understand the issues that commonly confuse the public, hence the section in this book to distinguish the LPA from other common legal documents.

The Best is Yet to Be.

ACKNOWLEDGEMENTS

Without the following people this book would not have been possible.

Anita, my editor, for taking on a new book writer and guiding me; my most learned friend Vincent Ooi, for kindly agreeing to write the Foreword; my colleagues at Yuen Law LLC: managing director Samuel Yuen, for his support and leadership; Cheryl Mok, for accompanying me for almost all my talks, encouraging me to write articles and helping me to hone my presentation skills; Serene Tan and Brendan Kok, for sharing with me the ins-and-outs of the LPA Forms.

The judges of the Family Justice Court past and present, from whom I have gained much insight and wisdom from the reasoned decisions at every stage on protecting the best interests of the person lacking mental capacity; my clients, who have allowed me to journey with them and help them, and in the process I have learnt much; Patrick Liew, the GEX team and the MAPIC students; Jean and her teams at Unicorn Financial; Hwei Min and her Alpha Group (NTUC-Income) for helping me to develop a good sense of the FAQs on this topic; my very promising interns Stanley Woo, Trina Priscilla Ng, Vanessa Cheong and Grace

Lee who helped me with research and with making the book read like less of a legal submission. Allen Sng, for sharing with me his passion and knowledge in this area of the law.

Dr Justin Chew Ling Hui (Geriatric Medicine, Tan Tock Seng Hospital) for his professionalism in treating my mother and helping me to gain a better understanding of the medical and care aspects of dementia. My brother, Fung Jen, for his support all these years. My wife and best friend, Vanessa, my pride and joy Kimberley and Benjamin, for literally making space at the home computer for Papa to write.

To Jesus, my saviour, my strength and my all.

For the LORD IS GOOD;
his steadfast love endures forever,
and his faithfulness to all generations.

Psalm 100:5

Lim Fung Peen

LLB (Hons) London

Barrister-at-law (Middle Temple)

Advocate and Solicitor, Supreme Court of Singapore

Director, Yuen Law LLC

GLOSSARY

LPA	Lasting Power of Attorney
MCA	Mental Capacity Act*
OPG	Office of the Public Guardian
MSF	Ministry of Social and Family Development
CPF	Central Provident Fund
IMH	Institute of Mental Health
POA	Power of Attorney
AMD	Advance Medical Directive
ADAP	Assisted Deputyship Application Programme
SPED	Special Education Schools
YOD	Young Onset Dementia
OS	Originating Summons
FJC	Family Justice Courts

*The Mental Capacity Act (Cap 177A, 2010 Rev Ed) is reproduced with permission from the Attorney General's Chambers of Singapore. Readers may consult Singapore Statutes Online at <https://sso.agc.gov.sg> for the latest version of the Act.

1

INTRODUCTION TO THE LPA

A Brief History

With the incidence of dementia rising amidst the silver tsunami, an increasing number of Singaporeans will spend the last years of their lives unable to make decisions for themselves.

The Alzheimer's Disease Association has noted:¹

Of particular note is the prevalence of dementia in Singapore, where in 2005, those with dementia aged 65 years and above numbered 22,000. By 2020 it is projected the figure will increase to 53,000, a figure which will more than triple to 187,000 by 2050.

Singapore has one of the fastest ageing populations in Asia. Singapore is the oldest society amongst the 10 ASEAN countries and the incidence of dementia is on the rise. Resident population aged 65 years and over has steadily risen from 6.0% (1990) to 7.2% (2000), 8.7% (2008), 9.0% (2010) and 13.7% (2018).²

A 2013 study, Well-being of the Singapore Elderly (WiSE), led by the Institute of Mental Health found the prevalence of dementia was 10% in those aged 60 and above.³

¹ *Clinical Practice Guidelines – Dementia*, MOH Clinical Practice Guidelines 3/2007 (March 2007).

² Singapore Department of Statistics, *Population Trends 2018* (ISSN 2591-8082).

³ *IMH Link* (April–June 2015).

If the average age of advanced dementia is 75 to 80, and if the average life expectancy is about 85, it would be mean that there would be a period of five to ten years when the average Singaporean would need help in making decisions and managing their assets. That period could be longer if the person suffers dementia at an earlier age (Young Onset Dementia).

The Mental Capacity Act (MCA) replaces a currently repealed act, the Mental Disorders and Treatment Act. The Act empowers people as it allows them to plan for a future where they may find themselves in a state of compromised mental capacity. To do so, the MCA allows people to ensure that there is someone to make decisions for them when they are unable to do so themselves.

As such, since 2010, the Ministry of Social and Family Development has been raising awareness of a legal document known as the Lasting Power of Attorney (LPA). Applying for the LPA is a legal process. The Office of the Public Guardian (OPG) is a division of the Ministry of Social and Family Development (MSF). The OPG supports the Public Guardian in carrying out his functions. Through the OPG, much has been published on various media platforms explaining the functions of the LPA. A guidebook, *A Guide to: The Lasting Power of Attorney*, has also been made available to the public on the OPG website. Furthermore, the \$75.00 registration fee of the LPA has been waived from 2014 until 31 August 2020. In spite of all these efforts, applications have been slow considering the importance of this document.

Tip

Do an LPA for yourself and your loved ones now while registration fees are waived.

What is the MCA and why should it be important to me?

The MCA is one law that we should be aware of as it affects all of us, regardless of our background. It affects us all because it is about the ability of a person to make a specific decision at a particular time.

The MCA enables you to plan ahead and gives your loved ones, or persons you trust, the power to make choices for you when you lose your mental capacity. Under the MCA, you are empowered to:

1. make an LPA to appoint one or more persons (donee(s)) to make decisions and act on your behalf if and when you lack mental capacity in the future; or
2. apply to the court to appoint a deputy to make decisions and act on behalf of a person who lacks mental capacity where a decision is required but the person does not have a proxy decision maker; or
3. apply to court to appoint yourself as a deputy for their children with intellectual disability; you can also appoint another person as a successor deputy to plan for in the event the parents pass away or lose their mental capacity.

Office of the Public Guardian

The MCA created a new office known as the Office of the Public Guardian (OPG). The Public Guardian is the head of the OPG, with the duty to protect the interests of persons who lack mental capacity and are vulnerable.

The Public Guardian carries out various functions towards enabling and protecting persons who lack capacity. The role of

the Public Guardian is to maintain a register of LPAs and a register of court orders appointing deputies, and to investigate allegations of abuse by donees and deputies.

Code of Practice

If you are going to be a donee or a court appointed deputy, the Code of Practice is an important and useful guide to the MCA and would help you with:

1. your roles and responsibilities under the MCA;
2. the steps you can take to prepare for a time in the future when the person in question lacks mental capacity; and
3. the principles to be applied when caring for persons lacking mental capacity.

Purpose of the LPA

The MCA sets out that “a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”⁴

The MCA also explains that⁵

... a person is unable to make a decision for himself if he is unable —

- a. to understand the information relevant to the decision;
- b. to retain that information;
- c. to use or weigh that information as part of the process of making the decision; or
- d. to communicate his decision (whether by talking, using sign language or any other means).

The loss of mental capacity can happen suddenly, gradually, or intermittently. For example, the sudden occurrence of a stroke or a brain injury would cause a person to lose his mental capacity unexpectedly. This may also take place progressively in the case of dementia, and intermittently in the case of substance abuse.

Through the LPA, the MCA helps those who lack mental capacity by granting them legal protection. The LPA is a legal document created when a Donor (the person creating the LPA) appoints a person, known as a Donee, to make decisions on his behalf when he lacks mental capacity. The decisions a Donee can make can be regarding a Donor’s personal welfare, or regarding his property and affairs, or both. An LPA will take effect only if and when the donor loses his mental capacity.

In the event when a person loses his mental capacity, there would be a significant period of time before his will comes into play, therefore an LPA is needed to appoint a donee so that decisions can be made on his behalf.

Tip

When selecting whom to appoint in your will and LPA, choose a person(s) you trust! To make things easy, you can appoint the same person(s) in your will as in your LPA.

Reasons to Get an LPA Now

We enjoy the benefits of living in a society that is systematic, efficient and has many convenient amenities. Singapore is world-renowned for such qualities. Unfortunately, the very thing that we pride ourselves on can cause us to take many things for granted.

⁴ Mental Capacity Act, section 4.

⁵ Mental Capacity Act, section 5.

A common observation amongst Singaporeans is that we believe many things are done automatically without us having to take action.

Here are a few common examples where action on our part is required before payments can be made or before legal steps can be completed.

Scenario	Objectives	Document(s) that need to be signed
Hospitalisation	Specific medical treatment	Consent form
	Claim from insurance company	Insurance claim form
Car accident	Damage claims from insurance	Insurance claim form
	Potential lawsuit	Court documents
Managing bank accounts	Transferring money to family members	Personal Authentication or Letter of Authority (for another person)
Running a business	Paying salaries	Cheques
	Rent office/shop space	Tenancy agreement
	Tax submissions	IRAS documents
	Government licenses	Application forms
Owning property	Renting out house for income	Tenancy agreement
	Selling of property	Sale and purchase agreement
	Gifts to family members (transfer of legal ownership)	Legal documents

Under normal circumstances, all it takes is your signature to get things done – but what if one day you are unable to sign such important documents?

Without your ability to sign documents and authorise such decisions personally, your family would have to take a more inconvenient and costlier route to carry out the same payment or legal steps, especially since registration fees for the LPA are currently waived.

The examples used in the following sections are recounted from the real-life experiences of Singaporeans around us. These stories are from the reports of the OPG.

R is a 53-year-old married man who has suffered a stroke during the course of his employment. He has not been able to both respond to external stimuli or to communicate with his family by talking, using sign language or through any other means. He has two children, both under the age of 21. His wife sought compensation on his behalf under the Work Injury Compensation Act and insurance compensation. The compensation monies would mainly be set aside for his medical treatment, future medical needs and his children's educational expenses. Unfortunately, without an LPA in place, his wife had to go through a separate application process to be appointed as his deputy, in order to give her the power to act on his behalf.

The court authorised his wife to act on his behalf in all personal welfare and property and affairs matters, including the authority to act on his behalf for work injury compensation claims under the Work Injury Compensation Act and for insurance compensation.

The OPG observed in its Annual Report 2011 that R was the sole breadwinner for the family until his stroke had left him incapacitated, leaving behind a family with no instructions to the management of his affairs. His wife had to apply to be his deputy in order to receive compensation monies due to him for his upkeep and the family's maintenance.⁶

⁶ Originating Summons No OSF335 of 2010.

Had R chosen to do an LPA earlier, he would have saved his family the hassle of applying for his wife to be his deputy. This case illustrates that having an LPA done makes a big difference and minimises delays as well as medical and legal expenses.

Who the LPA is for

Is the LPA only for the elderly?

It is true that in most cases, the loss of mental capacity involves the elderly, but that does not mean that you are safe if you are not in this age group.

In 2014,⁷ a 49-year-old man, P, fell into a coma after suffering a stroke and he was cared for at home by his wife. His wife applied to the court to be appointed as his deputy to manage his personal welfare and property and affairs. The court authorised the deputy to terminate P's insurance policy, represent him in legal proceedings and for the deputy to withdraw money from P's bank account to pay for maintenance of his child.

The OPG observed in its Annual Report 2014 that:

P was the sole breadwinner of the family and his family needed access to his assets to pay for his medical bills and maintain the expenses of their child. If he had the opportunity to make an LPA before he had lost capacity, his proxy decision maker or donee could have initiated legal proceedings on his behalf immediately without having to go through a court application to have a deputy appointed.⁸

Tips

1. If you are the sole breadwinner of the family, doing an LPA would ensure that your family has access to your assets in order to resume living normally.
2. It is especially vital and beneficial for the elderly, married couples, and those owning properties like bank accounts or condominiums in joint names to create an LPA to protect themselves legally.

In 2013,⁹ a single 49-year-old man was in a road accident that caused him to lose his mental capacity. He had various assets such as bank accounts, CPF savings, insurance policies and a property he jointly owned with his mother. Due to the nature of his incapacity, it was necessary to liquidate his assets in order to pay for his continued care expenses. His brother and sister obtained an order from the court appointing them as his deputies.

The court authorised the siblings to act jointly and severally on his behalf and in his stead for all personal welfare and property and affairs matters. This included the right to sell his share of the flat – jointly owned with his mother – and the right to manage all of his other financial matters.

The OPG observed in its annual report that this man had various types of assets and may have had specific instructions on managing his property and affairs. If he had the opportunity to make an LPA, he could have indicated his choice of a proxy decision maker(s) as well as saving his family members the hassle of applying to the court in order to manage his assets.¹⁰

⁷ Re: Q (2014)

⁸ Originating Summons No OSF1 of 2014.

⁹ Re: D (2013)

¹⁰ Originating Summons No OSF620 of 201.

Tip

If you are single and have many assets under your name with specific instructions with regards to how they are to be managed, doing an LPA can help you to do that.

An alarming trend

Young Onset Dementia (YOD) typically affects 45 to 65-year-olds, although it can also hit people in their early 40s or even late 30s. More aggressive than dementia in the elderly, it devastates the lives of sufferers at a time when they are still building careers and/or raising children. When hit, they find themselves having to cope with the diagnosis as well as the emotional and financial fallout. As it progresses, they may not be able to continue working and earning a living.

A relatively new phenomenon in Asia, YOD cases have been gradually increasing at the National Neuroscience Institute (NNI) in recent years. Last year, the institute saw 180 new cases, an increase from 100 in the previous year. YOD accounts for a third of all dementia cases seen at the NNI.¹¹

George Chong was only 48 years old and a father of two. He was the publisher of two “A” Level Chemistry textbooks. He was a Chemistry teacher in a school before he founded his own tuition business. He ran ultra-marathons on a regular basis.

Yet, he was not spared from the jaws of young onset Alzheimer’s Disease, resulting in dementia and loss of mental capacity. Many people are under a false sense of security that Alzheimer’s Disease is only a reality facing the silver generation. A report¹² by the

NNI surfaced an alarming revelation: in a short span of just five years, there has been a five-fold increase in the number of YOD cases. As in the case of George, dementia does not spare even the fittest and mentally most active members of the population.

Tips

1. There is no way to predict if you will suffer an unforeseen accident or medical illness. Prepare your family with an LPA.
2. Priority should be for those above 60 to do a LPA. Doing the LPA as a family encourages all your loved ones to do it together and secure some peace of mind for the whole family.

Is the LPA only for the rich?

Many people think that having such documents like an LPA or a Will is only for wealthy persons with many assets and not for your average, humble Singaporean. That is a myth that we should dispel once and for all. Rich or not so rich, you will need someone to manage your personal affairs and financial affairs, too. In fact, it is even more important if you feel you are not rich as you would wish to save on legal fees in the future and not burden your family with such unnecessary fees.

The LPA is for everyone!

All of us have responsibilities in life: couples have a commitment to each other and to their children, and children are responsible for taking care of aged parents. Our financial status does not change the fact that we should be prudent and responsible towards our loved ones when it comes to making an LPA.

Whether one is wealthy or not, critical decisions about medical treatment and managing one’s assets, for example, withdrawing

¹¹ <https://www.healthxchange.sg/head-neck/brain-nervous-system/dementia-may-affect-younger-people>

¹² <https://www.ncbi.nlm.nih.gov/pubmed/26444788>

from one's bank account, closing bank accounts, selling shares, signing CPF forms, collecting insurance payouts, selling or renting one's home, all have to be made. If we are suddenly unable to make such decisions, we would want our loved ones to take over the decision-making process.

P¹³ is a 53-year-old married man with four children aged 14 to 22 years old. He was a project director before he met with a traffic accident which caused him to sustain multiple physical injuries and severe brain damage, leading to loss of mental capacity. His wife had to apply to court for authority to manage his assets like his various investment and trading accounts and an en bloc offer regarding their current residential apartment. In the same application, his daughter applied to be appointed as the successor deputy. Having a successor deputy is important in the event that the current deputy, her mother, dies, becomes a bankrupt, or lacks mental capacity to act as the deputy.

After the application, the court authorised P's wife to act on his behalf in all property and affairs matters. P's daughter was also successfully appointed as successor deputy.

In its annual report, the OPG observed that he was incapacitated following an unfortunate accident, leaving behind a family of five, which he is now unable to care for. His wife had to step forward to make the application to court in order to manage his affairs. Had P made an LPA, he would have been able to appoint his wife immediately after the accident, easing her of the hassle of going through a court application.¹⁴

With an LPA, your loved ones will be able to act on your behalf in your best interest immediately following the loss of mental capacity.

Tip

We cannot predict if and when we will suffer a tragic accident or sudden illness, so it is better to be prepared by appointing someone to be your donee under the LPA. Failure to do so means incurring legal expenses and time spent on a court application to appoint a deputy.

Is it Worth it Financially to Get an LPA?

The objective of doing an LPA is to allow someone to have the legal authority to act on our behalf. If an LPA is not already in place when you lose your mental capacity, the only way someone can act on your behalf is if they apply to be your deputy. A deputy is someone whom the court gives authority to act on behalf of someone else. For example, a person who has lost mental capacity due to dementia will be unable to apply for an LPA, and someone else has to apply as a deputy on their behalf.

Think of the two scenarios in this manner. The LPA is likened to an immunisation vaccine which you administer, it is widely available, subsidised by the government and is very affordable. A Court Application for Deputy, on the other hand, can be thought of as a long drawn treatment process because immunisation against that particular disease was not done earlier. The cost, needless to say, will balloon manifold.

¹³ <https://www.healthxchange.sg/head-neck/brain-nervous-system/dementia-may-affect-younger-people>

¹⁴ Originating Summons No OSF291 of 2010.

	LPA Form 1 Fee (incl. GST)	LPA Form 2 Fee (incl. GST)
Singapore Citizens	\$0 <i>(fee of \$75 waived for another 2 years until 31 August 2020)</i>	\$200
Singapore Permanent Residents	\$100	\$250
Foreigners	\$250	\$300

Making an LPA gives you a peace of mind at a relatively affordable price.

Certified issuers charge a range of fees for their service. The difference in price is due to the type of service they render, from the basic certifying, to explaining and advising, and even vetting and submitting the forms on your behalf.

Minimising Family Disputes

Other than ensuring that there is a decision-maker for you should you lose your mental capacity, the LPA can also prevent or minimise family disputes. This is especially the case if you predict possible family conflict over the control of your assets after you have lost mental capacity. Doing an LPA now would ensure that your welfare will fall into the right hands when necessary to avoid being placed in a vulnerable position where there are multiple individuals jostling for control over your assets.

Tips

1. Compared to a court application, the LPA is very affordable, has a shorter registration period and gives you a lifetime of security for your family.
2. An LPA can help to circumvent family or legal disputes.

Common Misconceptions

What the LPA is not

Will v LPA

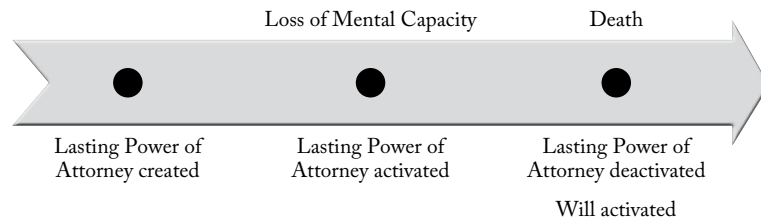
	Will	Lasting Power of Attorney (LPA)
What is it?	Appoints your executor and beneficiary and states how you wish to distribute your assets upon your death.	Appoint someone to act on your behalf when you lose mental capacity
Who can create one?	Anyone above 21 years of age with mental capacity	
When does it come into effect?	When the writer of the Will dies	When donor loses mental capacity
What can donees do on behalf of donors?	Specific to each Will	Personal welfare and/or property and affairs matters

Tip

Set up an LPA, even if you have a Will – make sure that you have both!

Indeed, your Will is one of the best ways to love your family, as it gives what you have to those you love for their enjoyment and benefit. A Will helps you by setting out clear instructions on how your assets should be distributed according to your wishes upon your death. Your Will comes into play only when you die, not before.

This is where the LPA comes in to fill the gap: it allows you to appoint a person (known as a donee) and authorise him or her to make decisions on your behalf while you are alive, but only when you have lost mental capacity. To put it differently, the LPA ceases to work after your death.



Power of Attorney v LPA

Unlike a Power of Attorney (POA), the Lasting Power of Attorney (LPA) only takes effect if the donor loses the mental capacity to act. Moreover, the donee(s) authority is restricted to two areas: personal welfare and property and affairs matters.

Many of us have the misconception that an “attorney” is a lawyer. Actually, the legal definition of “attorney” is simply someone authorised to act for another person. When you sign the POA naming a person as attorney, you give that person the authority to act for you. The person giving this authority is known as the “donor” and the person receiving the authority is known as the “donee”.

There are many different kinds of POAs. In Singapore, a commonly used power of attorney is the Housing and Development Board (HDB) POA. The HDB POA allows the legal owner of the HDB flat to authorise someone else to act on their behalf for sale, sublet and general management of the HDB unit.

The HDB POA is immediately revoked if the Donor loses mental capacity, unlike the LPA which sets in upon the Donor losing mental capacity.

In 2013,¹⁵ a 92-year-old man was rendered mute and immobile due to an untreated brain tumour and intracranial bleeding. P had a property in his name, and an interested party offered to purchase the property. All the siblings agreed to the sale of the property considering his condition and the number of years remaining on the lease.

Tip

The confusion regarding the POA led to the incurring of more legal costs and a longer time spent applying to court – do an LPA even if you already have a POA!

In its annual report, the OPG observed that the applicant misunderstood that the POA executed by his father would allow him to manage his father’s property. He had then unknowingly signed an Option to Purchase relating to the sale of the property. However, the applicant truly had no power to do such an act – his father no longer had mental capacity, so the POA was immediately revoked. With no LPA in place, he then had to obtain authorisation from the court to do so.

The lawyer for the applicant informed him that he had to be appointed by the court as his father’s deputy before he could sell the property on his father’s behalf. The applicant obtained an order from the court appointing him as deputy for his father.

The court authorised the son to sell and dispose of the father’s property at market price, and to deposit all sale proceeds into a trust account opened in the name of the father.¹⁶

¹⁵ Re: Z (2013)

¹⁶ Originating Summons No OSF358 of 2013.

In summary, these are the differences between a POA and an LPA:

	Power of Attorney (PoA)	Lasting Power of Attorney (LPA)
What is it?	Appoint someone to act on your behalf when you lack “physical” capacity (eg overseas / hospitalized, etc)	Appoint someone to act on your behalf when you lose mental capacity
Who can create one?	Anyone 21 years of age with mental capacity	
When does it come into effect?	On the date stipulated in the POA and/or when POA condition is fulfilled (eg when you go overseas)	When donor loses mental capacity
What can donees do on behalf of donors?	General, “almost everything the donor himself could do” or Specific (eg selling property)	Personal welfare and/or Property and affairs matters

	Advance Medical Directive	Lasting Power of Attorney (LPA)
What is it?	A very specific declaration to refuse extraordinary life-sustaining treatment in the case of a terminal illness	Appoint someone to act on your behalf when you lose mental capacity
Who can create one?	Anyone 21 years of age with mental capacity	
When does it come into effect?	When a person has terminal illness	When donor loses mental capacity
What can donees do on behalf of donors?	-	Personal welfare and/or Property and affairs matters

Advance Medical Directive v LPA

Under the Advance Medical Directive (AMD), Singaporeans can legally opt to not receive extraordinary life-sustaining treatment if they suffer from a terminal illness. Many would then wonder: is there any conflict between the LPA and the Advanced Medical Directive?

No, there is no conflict between the two legal documents. The decision to make an AMD can only be made by the individual and not any other person. Even with an LPA, the donee cannot register for the Advanced Medical Directive for the donor. Neither will a donee with an LPA be able to revoke or amend an already registered AMD of the donor.