

GUIDANCE FOR CREATING A LASTING POWER OF ATTORNEY

What is a Lasting Power of Attorney?

A Lasting Power of Attorney ("LPA") is a legal document which allows the attorney(s) to make decisions on behalf of you, called the grantor in this document. The attorney can only make the same decisions that you would have been able to make when you had capacity to do so. The attorney must act in your best interests and should take account of any past wishes, including those detailed in any Advanced Care Plan. This means consideration of what you would have decided, when you had capacity to do so. There are two types of LPA:

- for property and financial affairs, and
- for health and welfare decisions.

You can choose whether to make one or both types of LPA.

Who can make an LPA?

You can only make an LPA if you are aged 16 or over and have capacity to make this. This means that you must be able to understand what an LPA is and what decisions the attorney(s) can make on your behalf.

Who can act as an Attorney?

A person is eligible to be appointed and act as an attorney if they are –

- a) aged 18 or over,
- b) not bankrupt (for an LPA in relation to property and financial affairs).

For the purposes of appointment as an attorney in relation to an LPAs, a person is bankrupt if:

- (a) one of the following events took place in the Bailiwick not less than 10 years before the person is appointed as an attorney:
 - a declaration of insolvency has been made in respect of a person by the Royal Court under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929,
 - a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure a person's estate,
 - a person's affairs have been declared to be in a state of "*désastre*" at a meeting of that person's arresting creditors held before a Commissioner of the Royal Court,
 - an interim vesting order has been made against a person in respect of any of that person's real property in the Bailiwick, or
 - a composition, compromise or arrangement with creditors has been entered into in respect of a person whereby that person's creditors will receive less than 100 pence in the pound, or
- (b) that person has been made subject to the equivalent of any of the above events or orders in a jurisdiction outside the Bailiwick and has not been discharged from the legal effects of the relevant event or order for the purposes of the legislation of any other jurisdiction.

For property and finance LPAs, a person holding or deemed to hold a primary or secondary fiduciary licence can also act as an attorney.

The Law allows for the appointment of one or more attorneys. If there is more than one attorney, you should specify whether they are to act jointly, jointly and severally, or jointly in some matters and jointly and severally in others.

You should check, as far as it is possible, that any person you name as an attorney is eligible to be an attorney. If a person is not eligible to act as an attorney, that attorney will not be able to act and your LPA may not have legal effect. You and your attorneys are responsible for the accuracy of the information you provide on the form.

Divorce and LPA

If you name your spouse or civil partner as attorney and you later get divorced or lawfully separated, this will end the spouse or civil partner's appointment unless specifically stated otherwise in the LPA. If you name your spouse or civil partner as one of only two attorneys and they are to act jointly, divorce or lawfully separation will revoke your LPA.

You can create an LPA:

- Form A1 if you wish to make an LPA in relation to both Property and Financial Affairs AND Health and Welfare matters,
- Form A2 if you wish to make ONLY an LPA in relation to Property and Financial Affairs, and
- Form A3 if you wish to make ONLY an LPA in relation to Health and Welfare matters.

For all LPAs

The grantor is the person making the LPA. As the grantor you must be aged 16 or over and have capacity to make the LPA.

You can make a LPA for Property and Financial affairs and/or a LPA for Health and Welfare.

An LPA for property and financial affairs allows the attorney(s) to manage your property and financial affairs if you lose capacity to manage your affairs, but it can also be used whilst you still have capacity, if you give permission for this. The attorney can manage your financial affairs for a short period or for the longer term. The attorney(s) should act in your best interests and in accordance with your wishes and views.

An LPA for Health and Welfare allows the attorney to make decisions on your behalf if you lose capacity to make your own decision about your care or treatment. The attorney can make decisions about whether to accept or refuse any recommended

treatment or make decisions about care arrangements, such as admission to a care home.

There are a wide range of health and welfare decisions that may need to be made and therefore it is important to be clear, when creating the LPA, whether any decisions should be excluded (for example life sustaining treatment decisions). The attorney(s) should act in your best interests and in accordance with your wishes and views. It is advisable for you to discuss your wishes with your attorney, when making your LPA. Your attorney can consent to, or refuse, medical treatment, in the same way that you are able to make your own decisions, whilst you have capacity to do so.

Completion:

- Part 1 of Form A1 or Form A2 should be completed to make an LPA for Property and Financial Affairs.

- Part 2 of Form A1 or Form A3 should be completed to make an LPA for Health and Welfare decisions.

- Part 3 of Form A1 or the declaration in Forms A2 and A3 must be completed in all cases.

Please note - the grantor must complete and sign the relevant Part/Form before any of the attorneys or replacement attorneys sign.

Fees:

A fee is payable for registering a LPA. This must be paid before the LPA is registered.

Part 1 of Form A1 or Form A2

Where you are making a LPA for Property and Financial Affairs.

a) **Attorneys**

List the name, address and email address for all your attorneys. It is advisable to name at least two attorneys. If you wish to nominate more than four attorneys please include these on Page 6 (Additional information). **You cannot name a person who has been made bankrupt** (see above).

b) **Replacement attorneys**

List the name of any person who can act as an attorney if one of your original attorneys is no longer able to fulfil the role.

c) **Authority of attorneys to act**

Please consider how your attorneys are to act. You should consider whether this should be jointly and severally, jointly, or jointly for some decisions and severally for others.

Jointly and severally means that attorneys can make decisions on their own or together. Most people choose this option because it is the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA can still be used. If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.

Jointly Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court. **Please note** – if one attorney dies or can no longer act, all your attorneys become unable to act. Your LPA will no longer be valid unless you appoint at least one replacement attorney.

Jointly for some decisions and severally for others. Attorneys must agree unanimously on some decisions but can make other decisions on their own. If you choose this option you must list the particular decisions your attorneys should make jointly and agree unanimously on. The wording you use is important. **Please note** – if one attorney dies or can no longer act for any reason, none of your attorneys will be able to make any of the decisions which must be made jointly. Your LPA will not be valid for those decisions unless you appoint at least one replacement attorney. Your original attorney(s) will still be able to make any of the other decisions alongside your replacement attorneys.

d) **Attorney has authority to use the LPA while you still retain capacity**

You should decide whether you wish your attorney(s) to be able to use the LPA whilst you still have capacity. This could be because you would like your attorney to manage your finances or property whilst you are away on holiday or because you have physical health problems and need assistance. If you change your mind about this decision after registering the LPA, you can still amend it.

e) **Instructions, wishes or preferences**

Use this section to include any instructions, wishes or preferences for your attorneys. You should include any restrictions on managing your property and finances whilst you still retain capacity. You should also list the decisions your attorneys should make jointly and agree unanimously on. The wording you use is important to avoid any confusion.

f) **Restrictions and conditions**

Please use this section to include any decisions that you do not wish your attorney(s) to make regarding your property and financial affairs.

Part 2 of Form A1 or Form A3

Where you are making an LPA for Health and Welfare decisions.

a) **Attorneys**

List the name, address and email address for all your attorneys. It is advisable to name at least two attorneys. If you wish to nominate more than four attorneys please include these on Page 6 (Additional information).

b) **Replacement attorneys**

List the name of any person who can act as an attorney if one of your original attorneys is no longer able to fulfil the role.

c) **Authority of attorneys to act**

Please consider how your attorneys are to act. You should consider whether this should be jointly and severally, jointly or jointly for some decisions and severally for others.

Jointly and severally means that attorneys can make decisions on their own or together. Most people choose this option because it's the most practical. Attorneys can get together to make important decisions if they wish, but can make simple or urgent decisions on their own. It's up to the attorneys to choose when they act together or alone. It also means that if one of the attorneys dies or can no longer act, your LPA will still work. If one attorney makes a decision, it has the same effect as if all the attorneys made that decision.

Jointly Attorneys must agree unanimously on every decision, however big or small. Remember, some simple decisions could be delayed because it takes time to get the attorneys together. If your attorneys can't agree a decision, then they can only make that decision by going to court.

Please note – if one attorney dies or can no longer act, all your attorneys become unable to act. Your LPA will no longer be valid unless you appoint at least one replacement attorney

Jointly for some decisions and severally for others. Attorneys must agree unanimously on some decisions but can make others on their own. If you choose this option you must list the decisions your attorneys should make jointly and agree unanimously on. The wording you use is important.

Please note – if one attorney dies or can no longer act, none of your attorneys will be able to make any of the decisions you've said should be made jointly. Your LPA will not be valid for those decisions unless you appoint at least one replacement attorney. Your original attorneys will still be able to make any of the other decisions alongside your replacement attorneys.

d) Life sustaining treatment decisions

You must choose whether you are willing to allow your attorney(s) to make decisions about life sustaining treatment at a time when you no longer have capacity to make this decision for yourself. Life-sustaining treatment means care, surgery, medicine or other help from doctors that is needed to keep you alive, _____ for _____ example:

- _____ a serious operation, such as a heart bypass or organ transplant
- cancer treatment
- artificial nutrition or hydration (food or water given other than by mouth)

Some treatments are life-sustaining due to the situation. For some conditions, a course of antibiotics could be life-sustaining.

Decisions about life-sustaining treatment can be needed in unexpected circumstances, such as a routine operation that doesn't go as planned.

If you give your attorney(s) the right to make this decision, the attorney can decide whether you receive or do not have the specified treatment, in the same way that you would have done, when you still had capacity to decide. This means that your attorney can decide to refuse life sustaining treatment if they do not consider that it is in your best interests to have this. Your attorney should act in your best interests and in line with your wishes and views. It is advisable therefore to make sure that you talk with your attorneys about your wishes and views so that they can follow these. You can provide information about this in section e of the form.

e) Instructions, wishes or preferences.

You should use this section to include any instructions, wishes or preferences for your attorneys. If you have decided that your attorney(s) can make life sustaining treatment decisions you should document your views and wishes for your attorney, in the event of requiring such treatment. Are there specific treatments that you would not wish to have?

You should also list the decisions your attorneys should make jointly and agree unanimously on. The wording you use is important to avoid any confusion.

f) Restrictions and conditions.

Please use this section to include any decisions that you do not wish your attorney(s) to make regarding your health and welfare.

g) Advance care planning

If you have written an Advance Care Plan please attach a copy to the Lasting Power of Attorney. This will provide your attorney with a statement of your wishes which they should take into account when making a relevant decision on your behalf.

Part 3 of Form A1 or Declaration on Form A2 or A3

By signing the lasting power of attorney, you (the grantor) are appointing people (attorneys) to make decisions for you.

LPAs are governed by the Capacity (Bailiwick of Guernsey) Law, 2020, and the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022, any regulations made under it and the relevant Chapters of the Code of Practice. Attorneys must have regard to these documents.

Your attorneys must follow the principles of the Capacity Law:

1. Your attorneys must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorneys must help you to make as many of your own decisions as you can. They must take all practical steps to help you to make a decision. They can only treat you as unable to make a decision if they have not succeeded in helping you make a decision Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
3. Your attorneys must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorneys must act and make decisions in your best interests when you are unable to make a decision.
5. Before your attorneys make a decision or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Your attorneys must always act in your best interests. This is explained in the relevant chapter of the Code of Practice.

The LPA must be registered with HM Greffier and activated if you lose capacity to make the relevant decisions about your health and welfare or your property and affairs. The process for activating the LPA is explained in the Code of Practice and in the guidance notes for this form.

Revoking your LPA: You can cancel this LPA at any time, as long as you have capacity to do so. It doesn't matter if the LPA has been activated or not. This can only be done by attending HM Greffier.

Your will and your LPA: Your attorneys cannot use this LPA to change your will. This LPA will expire when you die. Your attorneys should notify HM Greffier and return any copies of the LPA.

Data protection: your data will be processed by HM Greffier and the Committee for safeguarding processes.

If you are only making one LPA, please delete the relevant statements regarding Property and Finances or Health and Welfare.

Signatures

You should sign the Lasting Power of Attorney form in the presence of a witness, who must be 18 or over. The witness cannot be one of your attorneys. Your attorneys should sign the form and their signature should be witnessed. It is not necessary for the grantor and attorneys to sign at the same time; however, the grantor must sign the form before it is signed by the attorney(s).

Registration

Anyone wishing to register an LPA must submit a completed form to the Greffe at registrar@guernseyroyalcourt.gg or by post to The Greffe, Royal Court House, St James' Street, St Peter Port, Guernsey, GY1 2NZ. Registration staff will review the submitted LPA and contact you to arrange an appointment to attend at the Greffe. You will need to attend with proof of identity (photo ID and birth certificate). The appointment will confirm that the application process has been completed correctly and that you wish H.M. Greffier to register the LPA. Payment of the relevant fee(s) will be taken at this time, so that the LPA(s) may be registered.

The Lasting Power of Attorney for property and finances can be used, with the grantor's permission, if this has been agreed under Part 1 section (d). The Lasting Power of Attorney for health and welfare can only be used if you have lost capacity to make your own health and/or care needs **and** once it has been activated. The Lasting Power of Attorney for property and finances should also be activated if you lose capacity to manage your financial affairs. A separate form is available for activation of the lasting power of attorney.

Activation

An LPA needs to be activated before it can be used by the attorney(s). This can only be done when the grantor has lost capacity to make relevant health and welfare decisions or to manage their property and financial affairs, such that it is appropriate that the lasting power of attorney is activated. Please note, an LPA for property and

financial affairs can be used with the grantor's permission whilst they still have capacity.

The attorney must request a capacity assessment to establish whether the grantor has capacity to make the relevant decision. The capacity assessment can be completed by the grantor's GP, consultant, or other health or social care professional, prescribed by regulations. The professional who completes the capacity assessment will complete the certificate to state that the grantor does not have capacity to make the relevant decision and therefore the LPA can be activated.

The attorney will need to make an application to HM Greffier on the relevant form to activate the LPA. The certificate of lack of capacity should be provided to HM Greffier. If HM Greffier is satisfied that the grantor has been assessed to lack capacity, such that the LPA can be activated, the Register of Lasting Powers of Attorney will be updated and the LPA will be activated. The activation certificate should be kept with the LPA. The attorney will be able to make relevant decisions in accordance with the LPA once this has been activated.

If HM Greffier believes that the grantor still has capacity or is concerned about the circumstances of the capacity assessment, the LPA will not be activated and the attorney cannot make decisions for the grantor. The grantor or the attorney may appeal against the decision of HM Greffier in the Royal Court.

Data Protection notice of HM Greffier

When processing your personal data, these offices are compliant with the Data Protection (Bailiwick of Guernsey) Law, 2017. For more information about how these offices process your personal data, please view the Fair Processing Notice available at the Royal Court Public Counter or on the Royal Court Website Homepage.