

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 you (the "grantor") to appoint an attorney(s) to make decisions on your behalf.

Who can make an LPA?

You must be aged 18 or over and have capacity to understand what an LPA is and what decisions the attorney(s) can make on your behalf.

There are two types of LPA: one for property and financial affairs and one for health and welfare matters.

An LPA for property and financial affairs allows the attorney(s) to manage your property and financial affairs if you lose capacity, but can also be used whilst you have capacity, if you give permission for this. The attorney(s) 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(s) to make decisions on your behalf about your care or treatment if you lose capacity to make your own decisions. The attorney(s) can decide to accept or refuse any recommended treatment or 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, therefore it is important to be clear when creating the LPA, if any decisions should be excluded (e.g. life sustaining treatment decisions). The attorney(s) 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. It is advisable for you to discuss your wishes with your attorney(s). Your attorney(s) can consent to, or refuse, medical treatment, in the same way that you are able to make your own decisions, whilst you had capacity to do so.

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) see note*.

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 must specify if 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, your LPA may not have legal effect. You and your attorney(s) 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 lawful separation will revoke your LPA.

Completion:

There are 3 types of LPA form available for completion:

Property and Financial Affairs **and** Health and Welfare (Form A1);
Property and Financial Affairs (Form A2), and
Health and Welfare Matters (Form A3).

Completing your LPA Form for Property and Financial Affairs.

(Form A2 or first section of Form A1)

a) **Attorneys**

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

b) **Replacement attorneys**

List the name of any person/s who can act as an attorney if your original attorney(s) is no longer able to fulfil the role. If you wish the replacement attorney(s) to be appointed in a particular order in the event that an original attorney cannot act; or wish the replacement(s) to act differently from the original attorney(s) you must complete section (e) to confirm your wishes.

c) **How can your attorneys act?**

You should consider whether your attorneys can act jointly, jointly and severally, or jointly for some decisions and severally for others.

Jointly and severally: Attorneys can make decisions on their own or together. Most people choose this option because it is the most practical. Attorneys can discuss important decisions if they wish but can make simple or urgent decisions on their own. The attorneys must choose when they act together or alone. This 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 if 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, unless you have appointed at least one replacement attorney, all your attorneys become unable to act, and your LPA will be invalid.

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 decisions your attorneys should agree on unanimously. The wording you use is important. **Please note** – if an attorney dies or can no longer act for any reason, unless you have appointed at least one replacement attorney, your LPA will not be valid for make any decisions which must be made jointly. Your original attorney(s) will still be able to make any of the other decisions alongside your replacement attorneys.

d) **Can the attorney(s) use the LPA with your agreement whilst you still have capacity to manage your property and financial affairs?**

You may wish your attorney(s) to be able to use the LPA whilst you still have capacity. This could be because you would like them to manage your finances or property whilst you are away on holiday or if 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 record any instructions, wishes or preferences for your attorneys, including any restrictions on managing your property and finances whilst you have capacity. You should also list the decisions your attorneys should make jointly and agree unanimously on, if appropriate. The wording you use is important to avoid any confusion.

f) **Restrictions and conditions**

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

Completing your LPA Form for Health and Welfare Matters.
(Form A3 or second section of Form A1)

a) **Attorneys**

List the name, address and email address for all your attorneys. It is advisable to have at least two attorneys. If you wish to nominate more than four attorneys, please include these on a separate sheet.

b) **Replacement attorneys**

- c) List the name of any person/s who can act as an attorney if your original attorney(s) is no longer able to fulfil the role. If you wish the replacement attorney(s) to be appointed in a particular order in the event that an original attorney cannot act; or wish the replacement(s) to act differently from the original attorney(s) you must complete section (e) to confirm your wishes.

d) **How can your attorneys act?**

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

Jointly and severally: Attorneys can make decisions on their own or together. Most people choose this option because it is the most practical. Attorneys can discuss important decisions if they wish but can make simple or urgent decisions on their own. The attorneys must choose when they act together or alone. This 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 if 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, unless you have appointed at least one replacement attorney, all your attorneys become unable to act, and your LPA will be invalid.

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 decisions your attorneys should agree on unanimously. The wording you use is important. **Please note** – if an attorney dies or can no longer act for any reason, unless you have appointed at least one replacement attorney, your LPA will not be valid for make any decisions which must be made jointly. Your original attorney(s) will still be able to make any of the other decisions alongside your replacement attorneys.

e) **Life sustaining treatment decisions**

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

f) **Instructions, wishes or preferences**

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

g) **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.

h) **Advance care planning**

If you have written an Advanced Care Plan, please attach a copy to the LPA. This will provide your attorney with a statement of your wishes which they should consider when making a relevant decision on your behalf.

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

LPAs are governed under The Capacity (Bailiwick of Guernsey) Law, 2020, 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 attorney(s) must assume that you can make your own decisions unless it is established that you cannot do so.
2. Your attorney(s) must help you to make as many of your own decisions as you can and must take all practical steps to help you to make a decision. They can only make a decision for you if they have not succeeded in helping you make a decision.
3. Your attorney(s) must not treat you as unable to make a decision simply because you make an unwise decision.
4. Your attorney(s) must act and make decisions in your best interests when you are unable to decide.
5. Before your attorney(s) 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 attorney(s) 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 these guidance notes.

Revoking your LPA: You can cancel an LPA at any time, if you have capacity to do so, whether it has been activated or not. This can only be done by attending HM Greffier.

Your will and your LPA: Your attorney(s) cannot use the LPA to change your will. An LPA expires when you die.

Data protection: HM Greffier and the Committee for Health and Social Care will process your data, for safeguarding processes.

Signatures

Please note – you the grantor must complete and sign the LPA Form **before** the attorney(s) or replacement attorney(s) sign. You should sign the Lasting Power of Attorney form in the presence of a witness, who must be 18 or over however the witness **cannot** be one of your attorney(s).

Your attorney(s) should sign the form and their signature(s) should be witnessed. It is not necessary for the grantor and attorney(s) to sign at the same time.

IMPORTANT – If you are completing combined form A1 for Property and Financial Affairs **and** Health and Welfare Matters the attorney(s) / replacement(s) **MUST** sign and have their signatures witnessed in **BOTH sections**.

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 at the Greffe.

For Alderney residents, following review of the form, registration staff will contact you to confirm if you wish the registration appointment to take place in Alderney or Guernsey.

For Sark residents, following review of the form, registration staff will contact you to confirm if you wish the registration appointment to take place in Sark or Guernsey. If the meeting is to be in Sark, a date will be arranged for a Deputy Registrar to travel to Sark.

For all registration appointments, the grantor will need to provide proof of identity (photographic ID). 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.

Home Visits

If a Grantor is unable to attend the Greffe for the appointment then a home visit can be arranged. **There is an additional fee of £165.00 for this service.**

The £165.00 fee for a Home visit in Alderney is payable directly to the Alderney Court office.

Activation

Please note, an LPA for **property and financial affairs** can be used with the grantor's permission whilst they still have capacity, if this has been agreed under Part 1 section (d).

The LPA for **health and welfare matters** 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 LPA for property and finances should also be activated if you lose capacity to manage your financial affairs.

An LPA needs to be activated before the attorney(s) can use it. 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.

The attorney must request a capacity assessment to establish whether the grantor has capacity. This can be completed by the grantor's GP, consultant, or other health or social care professional, prescribed by regulations. The professional who undertakes the capacity assessment will complete a certificate of lack of capacity to state that the grantor does not have capacity to make the relevant decisions and therefore the LPA can be activated. The attorney will need to contact HM Greffier to request that the relevant forms (certificates of lack of capacity) be provided to the person who is going to complete the capacity assessment.

The completed certificate(s) of lack of capacity should be returned 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 an activation certificate issued to the attorney. The activation certificate should be kept with the LPA. Following activation, the attorney will be able to make relevant decisions in accordance with the LPA.

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.

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For the purposes of appointment as an attorney in relation to an LPA, 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.