

A practical guide to Lasting Powers of Attorney in Jersey

Briefing Summary: A Lasting Power of Attorney ("LPA") is a document which a Jersey resident individual can prepare to appoint one or more people to make decisions on their behalf. This briefing note looks at LPAs, types available, how they work, why they're important, and why professional help is recommended when creating one.

Service Area: Trusts and Private Wealth, Estate Planning, Wills and Inheritance

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What is an LPA?

A Lasting Power of Attorney ("LPA") is a document which a Jersey resident individual can prepare to appoint one or more people to make decisions on their behalf. The person making the LPA is known as the Donor and the person appointed to represent them is the Attorney.

The key feature of an LPA is that it will remain valid and effective if and when the Donor loses his/her capacity.

LPAs are governed by the Capacity and Self-Determination (Jersey) Law 2016 ("CSDL"), regulations made under it and the CSDL Code of Practice.

What is capacity?

Capacity relates to a person's ability to make decisions for themselves. Capacity can fluctuate and is time and decision specific.

Capacity can be impacted by physical injury, mental illness, learning disabilities or conditions such as dementia. However, being diagnosed with any of these conditions does not mean that the person lacks the capacity to make any decision now or in the future.

What are LPAs for?

There are two types of LPA, one for health and welfare and one for property and affairs. The Donor may prepare either one or both depending on their circumstances and preferences.

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A "health and welfare" LPA covers decisions relating to the Donor's health and care, such as medical decisions (including decision about life sustaining treatment), what care they should receive such as "at home" care, or the selection of the Donor's care home. This LPA can be helpful as it allows the Attorney to speak to the Donor's doctors, be informed about the Donor's medical requirements, and assist with the Donor's medical appointments and treatments generally.

A "property and affairs" LPA covers decisions relating to the Donor's property and financial affairs. It enables the Attorney to deal with third parties, such as the banks, social security and the tax office on the Donor's behalf. This type of LPA can also enable the Attorney to assist with the sale or rental of the Donor's property if needed.

When can the LPAs be used?

A "health and welfare" LPA will only become effective if and when the Donor loses capacity.

For the "property and affairs" LPA, the Donor can choose to let their Attorney start making decisions from either the date the LPA is registered or only once the Donor has lost capacity. This type of LPA can be helpful for instances where the Donor is unable to (or simply does not want to) do certain tasks such as go to a cashpoint to withdraw cash or pay a bill.

How do I make sure my Attorneys make the right decisions?

The Attorney must always act in the Donor's best interests and must follow the principles of the CSDL. These principles include:

- Assuming that the Donor can make their own decisions unless it is established that they cannot;
- The Attorney must help the Donor with making as many of their own decisions as they can; and
- The Attorney must not treat the Donor as unable to make decision simply because they make an unwise decision.

The Donor can decide whether to appoint one or more Attorneys, and if they should act jointly or separately, or jointly for some decisions and separately for some decisions.

The Donor can also detail preferences and instructions for the Attorneys to follow in their official LPA documents.

Why should you prepare an LPA?

An LPA is an extremely useful document to have in place, just in case it is needed at some point in one's life. It is an important part of estate planning which is often overlooked and is crucial once a person has lost capacity.

Everyone should have an LPA, whether to ensure finances are managed appropriately, or to clearly set out your wishes in relation to your health and care.

Preparing an LPA does not mean you are giving up your rights to make decisions for yourself, instead it is enabling and empowering you to maintain control of your personal and financial affairs should you one day temporarily or permanently be unable to make decisions for yourself.

What if I do not have an LPA in place when I need it?

If a Jersey resident individual loses capacity and does not have an LPA in place then a delegate will need to be appointed by the Jersey Royal Court. This can be an expensive and time-consuming process.

Why is it important to instruct a professional to help?

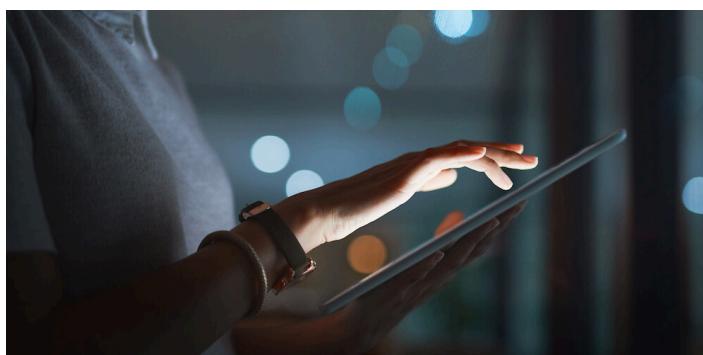
It is important to instruct a professional to assist you with preparing an LPA for the following reasons:

- Ensure the document(s) truly reflects the Donor's wishes
- Help with preparing bespoke instructions and preferences to suit the Donor's specific circumstances
- Tailored legal advice to ensure that the Donor chooses the right attorney, and is fully aware of their rights and responsibilities
- Protect the Donor against undue influence, coercion and fraud

Should you wish to instruct Carey Olsen to assist you with preparing your LPA(s), we will discuss with you the legal rights and responsibilities of the Donor and Attorney to ensure there is no confusion. We can also assist you with drafting your preferences and instructions to ensure that the LPA is tailored to your specific wishes and circumstances.

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