

# Lasting Power of Attorney

A brief guide to explain the **Lasting Power of Attorney**

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## Capacity (Bailiwick of Guernsey) Law, 2020 - Lasting Power of Attorney

A Lasting Power of Attorney (LPA) allows an individual with mental capacity (the “grantor”) to plan for their future and to put in place arrangements to support them at a time when they may no longer have capacity to make decisions for themselves by giving authority to another, or group of others, (the “attorney”) to make decisions on their behalf. Individuals will be able to register two different types of LPA: one for 'health and welfare' matters and the second for 'property and financial affairs'.

The **LPA for 'health & 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). 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 the capacity to do so.

The **LPA for managing '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.

### Registration

- Application forms for registering LPAs are available to download from the Royal Court website: [www.guernseyroyalcourt.gg](http://www.guernseyroyalcourt.gg) under 'Lasting Powers of Attorney' or paper forms are available for collection from the Greffe. Guidance notes on how to create a Lasting Power of Attorney are also available to download.
- The fee for one LPA will be £88 or if a person wishes to register both LPAs at the same time, the fee will be £110. If/when it becomes necessary to activate the LPA subsequently, there will be no further fee to pay.
- Anyone wishing to register an LPA is asked to submit a completed form to the Greffe at [Registrar@guernseyroyalcourt.gg](mailto:Registrar@guernseyroyalcourt.gg) or paper copies to, The Greffe, Royal Court House, St James Street, St Peter Port, Guernsey. GY1 2NZ. Registration staff will then contact the applicant to arrange an appointment at the Greffe for a personal interview. The Registration team can be contacted on **01481 225277** for any queries.

- The Ordinance does not require an individual wishing to register an LPA to use an advocate to complete and register the form, but there is nothing to preclude this if they wish to do so.
- An individual can cancel their LPA at any time, if they have the 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.

### **Activation**

- The LPA for Property & Financial Affairs can operate immediately if the grantor chooses (as with a Power of Attorney) but otherwise can only operate once activated. The LPA for Health & Welfare can only operate once activated.
- The LPA must be activated so that the attorney can act if the grantor loses capacity to make the relevant decisions about their health and welfare or their property and affairs. The process for activating the LPA is explained in the Code of Practice and in the guidance notes on how to create an LPA.

### **Powers & Duties of an Attorney**

- The attorney should always act in the grantor's best interests and in accordance with their wishes and views.
- An LPA does not automatically give the attorney power to sell the grantor's realty (houses and land). For the attorney to do so, it is necessary to make an application to the Royal Court seeking permission to sell the grantor's realty.
- The attorney(s) cannot use an LPA to change the grantor's will. The LPA will expire when they die when responsibility will transfer to the personal representatives. The attorneys should notify HM Greffier and return any copies of the LPA.

N.B. At the outset of the process if it is deemed that the person is no longer capable of managing their affairs themselves, then their family can, if they decide, apply for Guardianship.

### **General disclaimer**

*The purpose of this note is to provide general guidance. While it is believed to be accurate and up to date, it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. Users of this guidance note are encouraged to exercise their own skill and care in relation to the information contained in this guidance note and to obtain relevant professional advice.*



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