

Jersey Lasting Powers of Attorney



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Introduction

This briefing gives an overview of Capacity and Self-Determination (Jersey) Law 2016 Law in relation to making a Lasting Power of Attorney in Jersey

The “Capacity and Self-Determination (Jersey) Law 2016” came into force in October 2018. The new Law introduced the long awaited lasting powers of attorney (LPA) to Jersey. LPAs are the Jersey equivalent of an English “LPA” which are created under the Mental Capacity Act 2005.

LPAs allow a person (Donor) to appoint another individual or trust corporation (Attorney) to make decisions on their behalf. LPAs allow those resident in Jersey to plan for the risk of future mental incapacity by recording their decisions and intentions about their assets and welfare in advance of the loss of mental capacity.

LPAs are a much needed alternative to the previous approach to the management of financial affairs of those without mental capacity, namely the appointment of a Curator by the Royal Court. There are two types of LPAs

- **Health and Welfare:** This covers wishes in respect of medical treatment, care and life-sustaining treatment, including the refusal of such treatment. It can only be used once a Donor is no longer able to make these decisions for themselves.
- **Property and Affairs:** This second type gives the Attorney the power to deal with the Donor’s assets within the limits set out by the Donor in the LPA. It is possible for the Attorney to act under the LPA whilst the Donor still has mental capacity if this power has been included on their application form

Anyone may be appointed as an Attorney; it does not have to be a lawyer. Indeed, a trusted loved one or friend will often be chosen.

It is however important to choose an Attorney carefully because they will have power to make crucial decisions about the Donor’s affairs and welfare in the future if there is a loss of mental capacity. Once the LPA becomes active upon a loss of mental capacity, it is recommended that an Attorney take legal advice to ensure they fully understand the extent of their powers as well as any restrictions imposed on the decisions they make.

An Attorney must take decisions which are in the best interests of the Donor and in line with the authority granted to them in the LPA. An LPA will terminate upon the death of the Donor or following its revocation by the Donor (before a loss of mental capacity). It is possible for the Court to terminate an LPA if it finds that it is in the best interests of the Donor or because an Attorney has acted inappropriately

Whilst LPAs promote personal autonomy and give individuals the ability to choose who manages their affairs or makes decisions concerning their welfare, they are binding and create powers in relation to crucial matters.

As such they should be carefully considered before being entered into. If you would like further information about making a LPA or advice as to whether you should consider making one, please contact either Michelle Leverington or Stephen Crane on the contact information below:

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