

Lasting Power of Attorney for property and affairs

Checklist

This document is **NOT** the LPA application form to be registered. It is a tool to help you gather all the information you need to complete the online application form.

1 YOUR (THE DONOR'S) DETAILS	
Title	
Full name	
Maiden name if applicable	
Any other names by which you are known	
Date of birth	
Social Security no.	
Address	
Telephone no(s)	
Email address (if you have one)	
Do you receive: <ul style="list-style-type: none">• income support• Long Term Care (LTC) or• Long-Term Incapacity Allowance (LTIA)? If you do, and you provide evidence to the Judicial Greffe, you may be eligible to pay a reduced registration fee.	
If you are appointing your husband, wife or civil partner as your attorney and your relationship ends, would you still like them to act as your attorney?	Yes / No / Not applicable
2 AGENT'S DETAILS	
If someone is assisting you to complete the online form, they are called your Agent	
Title	
Full name	
Address	
Email address	
Telephone no(s)	

3 WHEN CAN YOUR ATTORNEY(S) MAKE DECISIONS FOR YOU?

You can choose that your attorney(s) for property and affairs can make decisions and act for you:

- As soon as the LPA has been registered, with your permission, and also when you don't have capacity to make the property and affairs decision for yourself

OR

- Only when you do not have capacity to make property and affairs decisions for yourself.

4 CHOOSE YOUR ATTORNEY(S)

Your attorney needs to be 18 or over and must have the capacity to make their own decisions. They do not need to live in Jersey. They could be:

- your wife, husband, civil partner, or partner. But if your relationship breaks up, they usually have to stop being your attorney unless you say in your LPA they can continue
- other family members
- friends
- people you trust
- a professional, like a solicitor or an accountant (professionals usually charge fees)

When choosing an attorney, consider:

- how many attorneys you want to appoint. They should be people with who you have a settled and easy relationship and if more than one, who get on with each other well, or who are likely to do so
- whether they know and understand your beliefs and preferences well enough to make decisions for you
- whether you trust them to make decisions in your best interests
- whether they have the skills to act under the LPA. For example, do they manage their own affairs well?

They must agree to be your attorney and must understand the role they will be fulfilling.

ATTORNEY

Title	
Full name	
Maiden name if applicable	
Any other names by which you are known	
Date of birth	
Social Security no.	
Address	

Telephone no(s)	
Email address (if they have one)	
<p>Do you want your attorney to be able to transact on your immovable property?</p> <p>For example, are you happy for the attorney to sell your home or put a LTC property bond (loan) against your home to raise funds for your ongoing care, if required?</p>	

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You can appoint more than two attorneys if you want to. Write their information on a separate sheet.

5 IF YOU ARE APPOINTING MORE THAN ONE ATTORNEY, HOW DO YOU WANT THEM TO MAKE DECISIONS FOR YOU?

Jointly	<p>All attorneys must agree every decision.</p> <p>The law does not allow for a majority of attorneys to make a decision (majority decision). If all attorneys cannot agree the decision then it cannot be made. In that case, your attorneys can apply to the Court to make the decision.</p> <p>If an attorney cannot continue in the role due to ill-health or death then the LPA stops unless you:</p> <ul style="list-style-type: none"> specify that the remaining attorneys can continue to act in the instruction box of the LPA. By way of example, you might state: <p><i>"If one of my original three attorneys can no longer act for me due to illness, death or another reason, my remaining two attorneys may continue to make the joint decisions I have specified together. If a second of my original attorneys is unable to fulfil the role of attorney then my last remaining original attorney must make all decisions for me in their sole capacity."</i></p> <p>OR</p> <ul style="list-style-type: none"> appoint a replacement attorney(s) to step in and make decisions with the remaining original attorneys in this circumstance.
Jointly and severally	<p>Attorneys can make decisions together or individually.</p> <p>They can agree between them what decisions they need to make jointly (together) and what decisions can be made alone and without reference to the other attorneys, for example paying a utility bill.</p> <p>Your LPA will continue even if an attorney retires or dies.</p>

<p>Jointly for specified decisions and Jointly and severally for all other decisions</p>	<p>You can choose the decisions that your attorneys are to make jointly (together). These are decisions that are important to you, for example selling your property, taking out a LTC property bond (loan) secured against your home, part-cashing in an existing investment to raise funds for your ongoing care fees or make a new investment.</p> <p>You must detail the decisions to be made Jointly in the Instructions box on the LPA application. You must think about how these joint decisions will be made if one of your attorneys can no longer act for you (read Jointly above).</p> <p>Your attorneys will make all other decisions on a joint and several basis.</p>
<p>If you choose that your attorneys will make some decisions for you Jointly (together) and all others Jointly and Severally then, write the joint decisions here.</p>	

6 REPLACEMENT ATTORNEY(S)

When making your LPA you can nominate other people to replace your attorney(s) if at some point they cannot act on your behalf anymore.

Consideration should be given to choosing replacement attorneys if you have specified that certain decisions must be made 'jointly' (together) by your attorneys. If one of your original attorneys can no longer act for you, for example, through illness, then your replacement attorney must join your remaining original attorneys to make those joint decisions.

If you choose not to appoint replacement attorneys but have specified that decisions (or certain decisions) must be made 'jointly' then the remaining attorneys can no longer make those joint decisions, and your LPA may be void, unless you specify that they can in the instruction box of the LPA application. By way of example, you might state:

"If one of my original three attorneys can no longer act for me due to illness, death or another reason, my remaining two attorneys may continue to make the joint decisions I have specified together. If a second of my original attorneys is unable to fulfil the role of attorney then my last remaining original attorney must make all decisions for me in their sole capacity."

REPLACEMENT ATTORNEY	
Title	
Full name	
Maiden name if applicable	
Any other names by which you are known	
Date of birth	
Social Security no.	
Address	
Telephone no(s)	
Email address (if they have one)	
<p>Do you want your attorney to be able to transact on your immovable property?</p> <p>For example, are you happy for the attorney to sell your home or put a LTC property bond (loan) against your home to raise funds for your ongoing care, if required?</p>	

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<p>Do you want your attorney to be able to transact on your immovable property?</p> <p>For example, are you happy for the attorney to sell your home or put a LTC property bond (loan) against your home to raise funds for your ongoing care, if required?</p>	

7 HOW WOULD YOU LIKE YOUR REPLACEMENT ATTORNEYS TO ACT?

- a) Solely (if they will be acting alone and not with other attorneys)
- b) Jointly (together as a committee)
- c) Jointly and severally – together and independently
- d) Jointly for some decisions and jointly and severally for others.

8 INFORM YOUR ATTORNEYS OF YOUR INSTRUCTIONS AND WISHES (YOUR PREFERENCES AND INSTRUCTIONS)

You may choose to give your attorneys guidance to assist them with making decisions on your behalf. This might include the following:

- The people you would like your attorney to consult when making decisions
- Your views, beliefs and values that may affect how the attorney makes decisions, such as where you would like to live and with whom and how your money is to be invested and spent.

Whilst you can choose to give your attorneys instructions or tell them about your wishes in your LPA, you don't have to. You can just talk to your attorneys and explain how you'd like them to act for you. They will then be free to make decisions they think are right, and they will know how you would want them made.

If you already have investments that are managed on your behalf by an investment professional (known as a discretionary investment management), or would like to allow your attorneys to use any scheme involving discretionary investment management, you should consider making a specific provision for this in your LPA.

Read through the guidance provided on LPAs on Courts.je to find out about common problems and mistakes when including preferences and instructions in an LPA.

Inform your attorneys of your wishes (preferences):

Preferences are what you'd like all your attorneys to think about when they make decisions for you (your wishes). Your attorneys don't have to follow them but should bear them in mind.

If you write any preferences, avoid words such as 'must' and 'shall'. Instead use the words such as 'prefer' and 'would like', so it's clear that you're giving your attorneys advice. If your attorneys must do something, include it in your instructions.

Instructions to your attorneys:

Instructions tell your attorneys what they must do when acting on your behalf, for example giving your attorneys authority to manage or invest in a discretionary management scheme or, if you have appointed a professional attorney such as a trust corporation or a lawyer, pay the professional attorney's fees.

If you write any instructions, use words such as 'must', 'shall' and 'have to'.

9. PERSON(S) THAT YOU WOULD LIKE NOTIFIED OF YOUR LASTING POWER OF ATTORNEY

A 'person to notify' is someone you choose to inform about the registration of your LPA.

People to notify do not have any other role in your LPA, for example they cannot be your attorneys or replacement attorneys. Many donors choose to notify family members or close friends.

You do not have to include persons to notify in your LPA if you don't feel it necessary, but it can provide an extra safeguard. It gives people you know well a chance to raise concerns and can reduce the possibility that your wishes are challenged later.

If you do choose to notify a person of your LPA, they can object to the LPA if:

- you or an attorney has died
- your marriage or civil partnership with an attorney has ended
- an attorney doesn't have the capacity to be an attorney
- you or an attorney is bankrupt (this only applies to property and financial affairs LPAs)
- you don't have the capacity to make an LPA
- there was fraud or undue pressure on you to make the LPA
- the attorney is acting above their authority or against your best interests

If you do choose to notify a person of your LPA and they raise no objections before its registration, it would be difficult for them to challenge the LPA later. So, including people to notify is a way of reducing the chance that the person might object later.

The person you have chosen to notify can raise a concern after the LPA is registered if, for example, they know that your attorney for property and affairs has become bankrupt; they believe that your attorney no longer has capacity to act for you; or if they have concerns that the attorney is not acting in your 'best interests'.

Notifying someone can also be a good way to make that person feel involved in the process of making your LPA, without giving them any power.

For example, if you have two children and nominate your husband and daughter to be your attorneys, but not your son, then nominating your son as a person to notify involves him from the outset and may encourage him to offer support when needed to the attorneys.

Title	
Full name	
Maiden name if applicable	
Any other names by which you are known	
Address	
Email address	

Title	
Full name	
Maiden name if applicable	
Any other names by which you are known	
Address	
Email address	

10. YOUR (THE DONOR'S) WITNESS. You and your professional witness must sign and date your LPA at the same time (together).

They must be an independent and impartial person who is a member of one of the following professions:

- a sitting member of the States of Jersey Assembly, for example a parish constable, a deputy or a minister
- a notary public
- a Jurat of the Royal Court of Jersey
- an advocate or solicitor of the Royal Court of Jersey
- a barrister admitted to the Bar of England and Wales, a solicitor of England and Wales or persons similarly qualified under the laws of any other jurisdiction
- a registered and practising medical practitioner, for example your doctor
- a registered and practising health care professional, for example a social worker, psychologist, psychiatrist or a community nurse
- a minister of religion
- a practising member of the Jersey Society of Chartered and Certified Accountants (or of an equivalent professional body in another jurisdiction)

Your witness must not:

- be related to the donor by birth or marriage
- be in a personal relationship with the donor or any other family member
- live at the same address as the donor
- be the manager or an employee of the care home in which you reside

Your witness should discuss the LPA with you before they watch you sign the document.

By witnessing your signature, your witness confirms that:

- you understand the importance of the LPA
- you haven't been pressured into making it
- there has been no fraud in making the LPA
- there is no other reason for concern

Title	
Full name	
Occupation / Professional title	
Address	
Email address	
Contact telephone number	

11. ONCE REGISTERED WHO WOULD YOU LIKE TO RECEIVE YOUR REGISTERED LPA?

YOU

ONE OF YOUR ATTORNEYS – you will need to specify which one if more than one

YOUR AGENT, for example your lawyer

12. WOULD YOU LIKE ANY COPIES OF YOUR LPA?

Once registered, the Judicial Greffe will send the original LPA to whoever you specified. The Judicial Greffe is occasionally asked to provide certified true copies of the LPA so that they can be given to each of the original attorneys for their ease of reference.

Copy LPAs can be provided by the Judicial Greffe upon request for a nominal fee.