

Role of Attorney under Property Financial Affairs

What you need to know about your role as Attorney of a Property and Financial Affairs Lasting Power of Attorney

You have been asked to be an Attorney of a Property and Financial Affairs Lasting Power of Attorney (LPA). This is an important role and so before you agree and sign the LPA, please take the time to read and understand your responsibilities.

An Attorney is a person(s) appointed in the LPA to make decisions on behalf of the Donor should they be unable to in the future due to lack of mental capacity. An Attorney can also act if the Donor retains mental capacity when the Donor activates the LPA themselves and ask for the help and support of their Attorneys.

Restrictions

- Attorneys must be at least 18 years old
- Have mental capacity to make decisions and
- Not be bankrupt or subject to a debt relief order

You may be asked to act:

Jointly & Severally – This is the most practical options because it allows Attorneys to make decisions on their own or together

Jointly – Attorneys must agree unanimously on every decision or

Jointly for some decisions & jointly and severally for other decisions – Attorneys must agree unanimously on some decisions and can make other decisions on their own.

If you have been asked to be a **Replacement Attorney** you will substitute or succeed an original Attorney where they are not able to act due to the occurrence of a terminating event namely death, disclaiming their appointment, loss of mental capacity or subject to a debt relief order.

When do I need to act?

An Attorney can only act if:-

- The LPA has been registered with the Office of Public Guardian (OPG)
- The Donor has been assessed to lack mental capacity to manage their finances and make the decision in question.
- You have been instructed by the Donor to assist them with their financial affairs

What decisions can I make as an Attorney?

Unless the document restricts you, you will be able to act for the Donor for the rest of their life as long as the Power is not revoked through choice by the Donor before the Donor has lost capacity.

You will be able to make decisions about the Donor's finances and property, which could include:

- Buying or selling property
- Opening, closing or operating any bank, building society or other account
- Giving access to the Donor's financial information
- Claiming, receiving and using (on the Donor's behalf) all benefits, pensions, allowances and rebates

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- Receiving any income, inheritance or other entitlement on behalf of the Donor
- Dealing with the Donor's tax affairs
- Paying the Donor's mortgage, rent and household expenses
- Insuring, maintaining and repairing the Donor's property
- Investing the Donor's savings
- Making limited gifts on the Donor's behalf
- Paying for private medical care and residential care or nursing home fees
- Applying for any entitlement to funding for NHS care, social care or adaptations
- Using the Donor's money to buy a vehicle or any equipment or other help they need
- Repaying interest and capital on any loan taken out by the Donor

In your role as an Attorney, you must follow the principles of the Mental Capacity Act 2005.

This includes:

- Assuming that everyone has capacity to make his or her own decisions, unless it is proved otherwise
- Ensuring a person has all the help and support possible to enable them to make their own decision, before concluding that they lack capacity to make their own decision
- Not treating a person as lacking capacity just because they make an unwise decision
- Only acting in the best interests of someone who lacks capacity
- Where possible preserve the rights and freedom to act of the person lacking capacity by using the least restrictive option

Making gifts

As an Attorney you have very limited powers to make gifts from the Donor's funds and are subject to any restrictions or conditions in the LPA and are limited to the following circumstances:

- To people who are related to, or connected with, the Donor (including Attorneys) on customary occasions including:
 - Births or birthdays
 - Weddings or wedding anniversaries
 - Civil partnership ceremonies or anniversaries, or
 - Any other occasions when family, friends or associates usually give presents
- Charity donations to which the Donor made or might have been expected to make gifts.

The Attorney must always make sure the value of any gift is not unreasonable taking into account all the circumstances in particular the size of the Donor's estate.

By signing the LPA, you are confirming:

- That you are over 18
- You have read and understood the LPA
- You understand the duty to act based in the principles of the Mental Capacity Act 2005
- That you will make decisions based on what's in the best interest of the Donor
- That you will take into account any instructions and preferences of the Donor
- That you will only act when the LPA has been registered