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Lasting Powers of Attorney come into force in Guernsey

APRIL 2022

On 30 March 2022, the States of Deliberation approved the introduction of the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022, meaning that from 1 April 2022, Guernsey residents will be able to put in place Lasting Powers of Attorney ("**LPAs**") so that decisions about their health and financial affairs can be dealt with by individuals that they themselves trust and have selected, in the event that they were to lose capacity.

What is an LPA?

A LPA is a legal document (a type of power of attorney) under which an individual (the "**Grantor**") can give the authority to another individual (their "**Attorney**") to take actions on their behalf. This authority will continue even if the Grantor no longer has capacity.

There are two types of LPAs:

1. ***health and welfare LPAs****:* these enable decisions to be made about your personal wellbeing, for example, where you live and what medical treatment you receive; and;
2. ***property and financial affairs LPAs****:* these enable decisions to be made about your financial affairs, for example, paying bills and managing your bank accounts.

A Health and Welfare LPA will only have effect where the Grantor lacks, or the Attorney reasonably believes that the Grantor lacks, capacity.

A Property and Financial Affairs LPA can be used by an Attorney either once the Grantor has lost capacity or where capacity is not in question, depending on the Grantor's wishes.

You will be able to choose to make one type of LPA or both.

Who can make an LPA?

An individual who has reached the age of 16 can make an LPA if they have capacity to do so. In short, this means that you must be able to understand what an LPA is and what decisions or actions the Attorney(s) will be able to make or take on your behalf.

Who can be appointed as your attorney?

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An attorney can be any individual who has reached the age of 18 and who has not had any form of bankruptcy proceedings issued against them in the 10 years preceding their appointment.

Where the power relates to a Property and Financial Affairs LPA, a person holding a full fiduciary licence under Guernsey law can also be appointed to act as an attorney.

More than one attorney can be appointed and you can specify that your attorneys have to act together, independently, or together on some matters and independently on others.

What decisions can be made by an attorney?

The decisions that an attorney can make will be governed by the terms of the LPA and all attorneys will always have a duty to act in the best interests of the Grantor. It will therefore be important to give careful attention to the powers given to an attorney when putting an LPA in place and an attorney must be familiar with the key principle of acting in an individual's "best interests" as outlined under the law and associated guidance.

There are some restrictions as to what an attorney is able to do in any circumstance. For example, a Property and Financial Affairs LPA does not give the attorney the power to make gifts from the Grantor's estate. It may be possible however, subject to any conditions or restrictions in the LPA itself, for an attorney to make gifts on customary occasions to persons (including the attorney) to whom the Grantor is related, or connected with, or to any charity to which the Grantor made, or might have been expected to make, gifts whilst they had capacity (if the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the Grantor's estate).

Where the Grantor does not have capacity, there are also restrictions on an attorney's power to sell the Grantor's interest in houses and/or land that they may own and acting outside those restrictions will be a criminal offence.

Attorneys should therefore ensure that they are clear as to their role, responsibilities and powers before taking up such an appointment.

How do you make an LPA?

Application forms for registering LPAs will be available to be downloaded from the Royal Court website or available for collection from the Greffe.

Forms should be completed and submitted to the Greffe before appointments are then arranged for the LPAs to be registered by the registration staff.

Once an LPA is created, it will have to be registered to be effective.

The Court will charge a fee of £88 for the registration of one LPA or if an individual wishes to make both a Health and Welfare and Property and Financial Affairs LPA the fee will be £100 if registered at the same time.

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No further fees will be charged by the Court if it becomes necessary to activate the LPA.

There is no need to utilise a lawyer to prepare and register any LPA however our team at Collas Crill is ready to assist you in relation to any queries that you may have and to guide you through the process of creating an LPA if required.

Click here for our price guide on creating an LPA.

If you would like to discuss these matters further, please get in touch with Joanne Seal, Partner in our International Private Client and Trusts team.

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