

Lasting Powers of Attorney – the role of the attorney



Attorneys can make the following decisions under a Lasting Power of Attorney (LPA), subject to any contrary restrictions, conditions or guidance contained within the LPA:

- Buying or selling property;
- Opening, closing or operating any bank, building society or other account;
- Giving access to financial information; claiming, receiving and using (on donor's behalf) all benefits, pensions, allowances and rebates;
- 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 behalf of the donor;
- 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 the donor needs; and
- Repaying interest and capital on any loan taken out by the donor.

The term 'donor' means the person who has made the LPA.

The duties and responsibilities of the attorneys are set out in the Mental Capacity Act 2005 and are explained in the Code of Practice. www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf

The following points are particularly important:

Attorneys must follow the principles set out in section 1 of the Mental Capacity Act 2005:

Principle 1

It should be assumed that everyone has capacity to make his or her own decisions, unless it is proved otherwise.

Principle 2

A person should have all the help and support possible to make and communicate their own decision before anyone concludes that they lack capacity to make their own decision.

Principle 3

A person should not be treated as lacking capacity just because they make an unwise decision.

Principle 4

Actions or decisions carried out on behalf of someone who lacks capacity must be in their own best interests.

Principle 5

Actions or decisions carried out on behalf of someone who lacks capacity should limit their rights and freedom of action as little as possible.

Attorneys must always act in the best interests of the donor

In general terms, attorneys need to:

- consider the donor's past and present wishes and feelings, beliefs and values;
- where practical and appropriate consult with:
 - a. Anyone caring for the donor;
 - b. Close relatives and anyone else with an interest

in the donor's welfare; and

c. Other attorneys appointed by the donor.

Attorneys must always check whether the donor has the capacity to make a particular decision themselves. Attorneys can still act if the donor has mental capacity and the donor has asked attorneys to act on their behalf and there are no restrictions in the document.

Attorneys only make those decisions the LPA gives them authority to make. That is:

- they cannot make decisions about the donor's personal care; and
- if the LPA is restricted and the attorney(s) authority is limited. If attorney(s) need further powers in the future, they will be able to apply to the court.

Other duties include having a duty to:

- Apply certain standards of care and skill (duty of care) when making decisions;
- Carry out the donor's instructions;

- Not take advantage of their position and not benefit personally, but benefit the donor;
- Not delegate decisions, unless authorised to do so;
- Act in good faith;
- Respect confidentiality;
- Comply with the directions of the court;
- Not give up the role without telling the donor and the court;
- Keep accounts; and
- Keep the donor's money and property separate from their own.

For more information on Wills please follow the link wards.uk.com/wills-and-mental-capacity or contact Jenny Pierce on 01179 292811 or jenny.pierce@wards.uk.com

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