

How a lasting power of attorney can help you during the COVID-19 crisis

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The Capacity and Self Determination (Jersey) Law 2016 came into effect on 1 October 2018, giving islanders the opportunity to put lasting powers of attorney in place which, under the previous customary law, was not possible.

Lasting powers of attorney enable a person (the "donor") to appoint someone else (the "attorney") to make decisions on their behalf in respect of (1) their property and affairs and (2) their health and welfare. This gives the donor the opportunity to exert more control over their future if it comes to a point where they can no longer express their choices and wishes due to incapacity of some form. A lasting power of attorney for property and affairs can also be used immediately at the donor's instigation, i.e. before the donor loses capacity, in the event that they feel they need this support. This is especially useful given the current climate for those people who are considered high risk and so are unable to leave their homes, or those who are self-isolating.

In the lasting power of attorney documents, the donor can provide their attorney with concise instructions and preferences in order to outline their wishes. An attorney must adhere to any instructions given by the donor, whereas preferences are guidelines that the attorney should have regard to when making decisions.

Example instructions for a LPA for property and affairs might include:

- My attorney must consult a financial advisor before investing over £20,000;
- My attorney must consult with my daughter/son before selling my property;

Example preferences for an LPA for property and affairs might include:

- I would like my attorney to donate the sum of £250 per year to an animal charity;
- I would like my attorney to only invest in ethical funds;

Example instructions for an LPA for health and welfare might include:

- My attorney must ensure that I am fed a vegetarian diet;
- My attorney must not make the decision to put me into a care home unless it is the opinion of my Doctor that I am no longer able to live at home;

Example preferences for an LPA for health and welfare might include:

- I would like to continue to exercise in the form of yoga and swimming for as long as I am able to do so and as long as it is of benefit to me;
- If it comes to the time when I should be cared for in a care home rather than live in my house, my first choice for care home would be [].

It is important however that you take care when inserting particular instructions and preferences in your LPA, if doing so without legal advice, to ensure that the wording used does not make the LPA unworkable. You do not wish to include something which the law doesn't allow, so always seek legal advice if you have queries to ensure that your attorney will be able to perform their role in line with your wishes.

Lasting powers of attorney are an excellent tool which enable islanders to take additional estate planning steps. This is especially important in light of the current pandemic when many islanders are somewhat removed from everyday life and wish to appoint someone to assist with the management of their property and financial affairs.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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