

ROYAL COURT OF JERSEY

RC22/02

THE CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016

REGISTRATIONS IN THE PUBLIC REGISTRY WHEN AN ATTORNEY HAS USED THEIR POWER TO TRANSACT UNDER A LASTING POWER OF ATTORNEY

Introduction

1. The [Capacity and Self-Determination \(Jersey\) Law 2016](#) (“the Law”) permits Lasting Powers of Attorney (an “LPA”) to be registered by which a person over eighteen who has capacity (the “donor”) grants authority to another (the “attorney”) to deal with their property and affairs, including authority to make decisions in circumstances where that individual lacks capacity to do so.
2. If the donor is so inclined the donor can grant within the LPA, authority to their attorney to transact on their immovable property, if such transaction is in the best interests of the donor.
3. Where the donor has not given their attorney(s) authority to transact on their immovable property but where the attorney believes that there is a need, and that it is in the best interests of the donor that the transaction takes place, then the attorney(s) must bring an application to Court seeking its permission to transact on the property.
4. The Law provides for a format for execution of an LPA. Articles 1 and 2 of Part 1 of the Schedule to the Law sets out the form and execution of LPA and Article 3 of the [Capacity & Self-Determination \(Miscellaneous Provisions and Prescribed Fees and Forms\) \(Jersey\) Order 2018](#) clarifies those persons who may witness execution of LPA.
5. The professional witness prescribed as able to witness the donor’s execution of the LPA must attest that in their opinion – “(a) *at the time of the donor’s execution of the instrument, the donor understands the purpose of the LPA and the scope of authority it confers; (b) no fraud or undue pressure is being used to induce the donor to confer such authority or execute the LPA; and (c) there is nothing else which would prevent a valid power from being conferred in the case.*”
6. The Law also provides that the Lasting Power of Attorney is not created and no power may be validly exercised thereunder until the LPA is registered with the Judicial Greffe.
7. Article 3 of the Powers of Attorney (Jersey) Law 1995 provides that LPAs are not Registerable Powers of Attorney.

8. To enable conveyancers to verify the provenance of a property, it is desirable that property transactions should be a matter of record and be searchable within the Public Registry.
9. This practice direction details the protocol that shall apply to record those transactions in the Public Registry where an attorney appointed pursuant to an LPA has used their authority to transact on a property.

The Protocol

10. That in any transaction where a party is to be represented by means of an LPA, the relevant party shall be obliged to notify the counterparty(s) no later than ten days in advance of scheduled completion.
11. That upon giving that notification, having in advance obtained the consent of the donor or attorney as the case may be, the party(s) seeking to use the LPA will submit a copy of the registered LPA to the other side(s).

NOTE:

If the attorney cannot evidence their authority to act, by providing the law firm with the original registered LPA or a certified true copy thereof, then they (the attorney) can request that the Probate & Protection Registry prepare a certified true copy for a nominal fee.

12. Should the law firm wish to confirm at an early stage that the LPA can be relied upon then it can seek such confirmation by emailing the Protection Division of the Judicial Greffe (jgrprotection@courts.je); copying in the attorney(s) appointed pursuant to the LPA and attaching a copy of the LPA previously provided to the law firm.
13. That the party(s) seeking to rely on the LPA shall further submit the registered LPA (or certified copy thereof) to the Protection Division of the Judicial Greffe together with a covering letter:
 - (i) confirming, where a copy LPA is enclosed, that the enclosed LPA is a true copy of the original registered LPA;
 - (ii) advising that the LPA is to be utilised by the attorney(s) for a specific property transaction to be passed before the Royal Court on behalf of the donor;
 - (iii) setting out the name, and where appropriate the UPRN, of the property to which the transaction relates;
 - (iv) confirming the proposed date for completion;
 - (v) requesting an officer in the Protection Division of the Judicial Greffe to confirm that the original registration as presented has not been revoked and continues to be a valid LPA (see Schedule 1).

NOTE: This letter, together with the applicable registration fee, must be received by the Protection Division as early as practicable ahead of the Court date but, in any event, no later than 5pm on the Wednesday immediately preceding the date the transaction is to be passed before Court;

14. Upon receipt of the letter referred to in paragraph 13 above, an officer of the Protection Division of the Judicial Greffe will inspect the Register of Lasting Powers of Attorney and will reply to the law firm confirming that:
 - (i) the LPA as presented has not been revoked and the LPA, and the authority granted pursuant to it, is valid; and
 - (ii) at the time of registering the LPA the donor chose to give authority to [attorney(s) name] to transact on their real property.
15. The above confirmation will be sent by an officer of the Protection Division of the Judicial Greffe to the law firm no later than 10.00am on the morning of Court, so that the conveyancer has certainty regarding the attorney(s) authority to act ahead of Court.
16. Following Court, the law firm's letter to the Protection Division of the Judicial Greffe (see 13 above) and the Judicial Greffe's response (see 14 above) (together the "*Registered Communications*") will be stamped and registered in the LPA book on PRIDE by the Public Registry.
17. Once registered on PRIDE, the Registered Communications will be returned to the law firm for their filing.
18. The registration fee required to register the said Registered Communications on PRIDE will be £65, as varied from time to time.
19. A separate application will be required on each occasion the LPA is to be used for any property transaction to: (1) be satisfied that the LPA has not been revoked and is still valid; and (2) so the relevant transaction can be recorded on PRIDE per 13 and 14 above.

This practice direction is effective immediately.

8 November 2022

SCHEDULE 1

DRAFT LETTER OF SETTING OUT THE BASIS OF A FREEHOLD TRANSACTION WHERE AN ATTORNEY APPOINTED PURSUANT TO AN LPA IS A PARTY

[Date]

The Protection Division
Judicial Greffe
Royal Court House
Royal Square
St Helier
Jersey
JE1 1JG

Dear Sirs

Our client: [Donor of LPA]

We **enclose** a copy of the registered Lasting Power of Attorney for Property & Affairs registered with the Judicial Greffe on [date]

We hereby confirm:

- 1 The documents enclosed herewith are true copies of the originals which we have seen.
- 2 It is proposed that the LPA be used by [name of attorney] [as attorney for/one of the attorneys for] [name of donor] for the purposes of the [purchase/sale/nature of transaction] in relation to [short form address].
- 3 The full address of the property to which the transaction relates is [full address] [post code], UPRN [UPRN no].
- 4 That it is presently proposed that the transaction be passed before the Royal Court on the [completion date].

We would ask that you confirm that the registered LPA, enclosed, has not been revoked and continues to be valid.

Yours faithfully
per pro

SCHEDULE 2

THE JUDICIAL GREFFE'S REPLY/CONFIRMATION

[On Judicial Greffe letterhead]

[DATE]

[Addressee]
[Law firm's address]

Dear [Addressee]

Your client: [Donor of LPA] and the Capacity & Self-Determination (Jersey) Law 2016

We hereby confirm that the lasting power of attorney for property and affairs (LPA) for [name of donor] of [donor's address] registered by the Judicial Greffe on [date], a copy of which you enclosed under cover of your letter dated [date] (*attached*) has not been revoked and is still valid in all respects.

We further confirm that, pursuant to the aforesaid LPA, [name of attorney(s)] was/were granted authority by [donor's name] to transact on their real property.

Yours sincerely

Greffier Substitute