

# ROYAL COURT OF JERSEY

RC22/05

## THE CAPACITY AND SELF-DETERMINATION (JERSEY) LAW 2016 (“the Law”)

**This practice direction sets out (1) the witnessing requirements of a lasting power of attorney (“LPA”) where the donor is unable to sign the LPA themselves; and (2) how to make changes to, or cancel, an existing LPA.**

### Index

1. Where the donor has made a ‘mark’ rather than a signature in front of the witness.
2. Where a person has signed on the behalf of the donor
3. Making changes to an LPA
  - (i) If a donor wishes to remove one of their attorneys (a partial revocation)
  - (ii) If a donor wishes to add another attorney or make a material change to an LPA
4. Revoke (cancel) an LPA
5. Other ways an LPA can end
6. If an attorney’s details change
7. If an attorney dies
8. If a donor changes address
9. When a donor dies

### Definition

The term “witness” throughout this practice direction means a person described at Article 3(a) to (j) of the [Capacity and Self-Determination \(Miscellaneous Provisions and Prescribed Fees and Forms\) \(Jersey\) Order 2018](#).

#### **1. Where the donor has made a ‘mark’ rather than a signature in front of their witness.**

The witness should write the following wording in manuscript beneath the donor’s mark.

*“I, [name of witness], certify that [Mr/Mrs X] appeared before me and declared that [he/she] is [unable to sign/does not know how to sign] their name as donor of this Lasting Power of Attorney application.*

*I confirm that the [mark] in the donor’s signature box above was made before me by [Mr/Mrs X].*

*Witness name*

*Date”*

## **2. Where a person has signed on behalf of the donor.**

- (i) An LPA shall be valid when it has not been signed by the donor if:
  - (a) the donor declared in the presence of their witness that, being physically incapacitated to sign the LPA themselves, the donor wishes the LPA to be signed by another person on their behalf;
  - (b) the declaration by the donor and the date it was made are recorded on the face of the LPA;
  - (c) the LPA was discussed with the donor in the presence of the person signing the LPA on behalf of the donor and their witness; and
  - (d) after the LPA was discussed with the donor, it was signed by some other person on the donor's behalf in the presence of the donor's witness and that witness put their signature to the LPA in the presence of the donor and that other person.
- (ii) The witness should write the following attestation in manuscript on the donor's signature page.

*"I, [name of witness], certify that [Mr/Mrs Donor] appeared before me and declared that [he/she] is unable to sign [his/her] name as donor of this Lasting Power of Attorney application. [He/she] further declared that [he/she] wished for [Mr/Mrs X] to sign the Lasting Power of Attorney application on [his/her] behalf.*

*The LPA was discussed with the donor in front of myself and [Mr/Mrs X]. I then watched [Mr/Mrs X] sign the LPA application on behalf of [Mr/Mrs Donor], [his/her] having confirmed that [he/she] was satisfied with its contents.*

*Witness name*

*Date"*

- (iii) A person shall not be competent to sign an LPA on behalf of a donor unless that person has the capacity to execute a valid LPA of their own.

## **3. Making changes to an LPA**

A donor can ask the Judicial Greffe to change their LPA if it has been registered and they still have capacity to make decisions for themselves.

- (i) **If a donor wishes to remove one of their attorneys (a partial revocation)**
  - (a) Where a donor wishes to remove one of their attorneys and where this change will not affect any other aspect of the LPA, including the decision-making powers, they should send the Probate and Protection Division of the Judicial Greffe an instrument of partial revocation.

- (b) The following is the wording for the instrument of partial revocation.

*"This instrument of partial revocation is made by [donor's name] of [donor's address].*

- 1. I granted a lasting power of attorney for property and affairs/health and welfare **[delete as appropriate]** registered with the Judicial Greffe on [date on which the LPA was registered] appointing [name of first attorney] of [address of first attorney]; [name of second attorney] of [address of second attorney]; and [name of third attorney] of [address of third attorney] to act as my attorney(s). **[delete as appropriate]***
- 2. I hereby revoke [attorney's name that you are revoking] ONLY from the lasting power of attorney and the authority granted to [him/her].*
- 3. In all other respects I reaffirm the provisions of the lasting power of attorney.*

*I enclose:*

- (i) a copy of my communication with [attorney's name that you are revoking] informing [him/her] that I intend to apply or have applied to the Royal Court to revoke their appointment as my attorney; and*
- (ii) my original lasting power of attorney for property and affairs/health and welfare **[delete as appropriate]** together with certified true copies of the lasting power attorney **[if applicable]**.*

*Signed [donor's signature]*

*Date signed [date]*

*Witnessed by [signature of witness]*

*Full name of witness [name of witness]*

*Address of witness [address of witness]"*

- (c) The continuing attorneys may continue to act notwithstanding that the partial revocation to the LPA may not yet have been registered by the Judicial Greffe.
- (d) The completed instrument of partial revocation, with enclosures, should be delivered to the Probate and Protection Division at the Judicial Greffe.
- (e) The fee for making this change to an LPA can be paid over the telephone by contacting a member of the Protection Team at the Judicial Greffe or in person when the instrument of partial revocation is delivered to the Judicial Greffe.

- (f) Upon review of an instrument of partial revocation, a member of the Protection Team at the Judicial Greffe will:
- 1) affix a note to the original LPA, and any certified true copies of the LPA, against the name and details of the attorney whose authority has been revoked stating that that attorney can no longer act;
  - 2) amend the register of LPAs to reflect that the authority granted to the attorney has been revoked; and
  - 3) write to the donor, the revoked and continuing attorneys acknowledging receipt of the instrument of partial revocation and enclosing an Act of Court confirming its registration. The letter to the donor will also include the updated original LPA, and any certified true copies of the LPA.
- (g) Once received, the donor or one of the continuing attorneys should ensure that banks, other organisations and individuals as appropriate see sight of the updated LPA so that they might update their records.

**(ii) If a donor wishes to add another attorney or make a material change to an LPA**

- (a) Where a donor wishes to make material changes to their existing LPA they will need to revoke (cancel) their existing LPA and create a new one. The donor must still retain capacity to make their own decisions in order to revoke an LPA.
- (b) To revoke an LPA the donor should send an instrument of revocation to the Probate and Protection Division of the Judicial Greffe.
- (c) The following is the wording for the instrument of revocation.

*"This instrument of revocation is made by [donor's name] of [donor's address].*

1. *I granted a lasting power of attorney for property and affairs/health and welfare (delete as appropriate) registered with the Judicial Greffe on [date the lasting power of attorney was registered] appointing [name of first attorney] of [address of first attorney] and [name of second attorney] of [address of second attorney] to act as my attorney(s). **[delete as appropriate]***
2. *I revoke the lasting power of attorney and the authority granted by it in its entirety.*

*I enclose:*

- (i) a copy of my communication with [attorney's name that you are revoking] informing [him/her/them] that I intend to apply or have applied to the Royal Court to revoke my original LPA in its entirety and, therefore, their appointment as my attorney; and*
- (ii) my original lasting power of attorney for property and affairs/health and welfare [delete as appropriate] together with certified true copies of the lasting power attorney [if applicable]. NOTE: [If the original LPA has been lost or mislaid a statement should be inserted to this effect]*

*Signed [donor's signature]*

*Date signed [date]*

*Witnessed by [signature of witness]*

*Full name of witness [name of witness]*

*Address of witness [address of witness]"*

- (d) The completed instrument of revocation should be delivered to the Probate and Protection Division at the Judicial Greffe together with (i) the original LPA; (ii) any certified true copies of the LPA; and (iii) a completed application for a new LPA (if applicable), which, once registered by the Judicial Greffe, will give effect to the changes that the donor wishes to make.
- (e) Upon review of an instrument of revocation, the Judicial Greffe will:
  - 1) update the register of LPAs to reflect that the existing LPA and authority granted to the attorneys and any replacement attorneys has been revoked; and
  - 2) write to the donor, all the former attorneys and replacement attorneys acknowledging receipt of the instrument of revocation and enclosing an Act of Court confirming that the LPA and the authority granted pursuant to it has been revoked.
- (f) The Judicial Greffe will register the new LPA and will write to each of the donor, attorneys and replacement attorneys (if any have been appointed) informing them that the new LPA has been registered.
- (g) The donor should inform their bank, other organisations and individuals as appropriate that their earlier LPA has been cancelled and replaced so that they might update their records.

#### **4. Revoke (cancel) an LPA**

- (i) Where a donor wishes to revoke their LPA they should send the Probate and Protection Division of the Judicial Greffe an instrument of revocation.

The donor must be able to make their own decisions when they end an LPA.

- (ii) The following is the wording for the instrument of revocation.

*“This instrument of revocation is made by [donor’s name] of [donor’s address].*

1. *I granted a lasting power of attorney for property and affairs/health and welfare **[delete as appropriate]** registered with the Judicial Greffe on [date the lasting power of attorney was registered] appointing [name of first attorney] of [address of first attorney] and [name of second attorney] of [address of second attorney] to act as my attorney(s). **[delete as appropriate]***
2. *I revoke the lasting power of attorney and the authority granted by it in its entirety.*

*I enclose:*

- (i) *a copy of my communication with [attorney’s name that you are revoking] informing [him/her/them] that I intend to apply or have applied to the Royal Court to revoke their appointment as my attorney; and*
- (ii) *my original lasting power of attorney for property and affairs/health and welfare [delete as appropriate] together with certified true copies of the lasting power attorney **[if applicable]**.*

*Signed [donor’s signature]*

*Date signed [date]*

*Witnessed by [signature of witness]*

*Full name of witness [name of witness]*

*Address of witness [address of witness]”*

- (iii) The completed instrument of revocation should be delivered to the Probate and Protection Division at the Judicial Greffe together with the original of the existing LPA and any certified true copies of the LPA.
- (iv) Upon review of an instrument of revocation, the Judicial Greffe will:
  - (a) update the register of LPAs to reflect that the LPA and authority granted to the attorneys and any replacement attorneys has been revoked; and
  - (b) write to the donor, all the former attorneys and replacement attorneys acknowledging receipt of the instrument of revocation and enclosing an Act of Court confirming that the LPA and the authority granted pursuant to it has been revoked.

- (v) The donor should inform their bank, other organisations and individuals as appropriate that their LPA has been cancelled so that they might update their records.

## **5. Other ways an LPA can end**

An LPA shall end if a single attorney:

- (i) loses the ability to make decisions;
- (ii) commences legal proceedings to divorce the donor or end the civil partnership (if they are husband, wife or partner) and the LPA does not specify that in such circumstances the donor would like the attorney to continue in the role;
- (iii) becomes the subject of bankruptcy in Jersey as defined by Article 8 of the Interpretation (Jersey) Law 1954 or any insolvency or proceedings of a similar nature to bankruptcy in any place outside Jersey;
- (iv) is removed by the Royal Court of Jersey; or
- (v) dies.

## **6. If an attorney's details change**

- (i) The donor or attorney must write to the Probate & Protection Division of the Judicial Greffe if one of the attorneys has changed their (i) name – by marriage or deed poll; and (ii) address, providing supporting documents, such as the original marriage certificate, with their new name and address.
- (ii) If requested to do so, the Judicial Greffe can issue an amended LPA for which an administration fee will be payable.
- (iii) The Judicial Greffe will update the register of LPAs to reflect the name change or change of address.
- (iv) The Judicial Greffe will not update the original LPA as those details were correct at the time of registration.
- (v) The attorney should inform the bank, other organisations or individuals of their change of name or address so that they might update their records too.

## **7. If an attorney dies**

- (i) The donor or another attorney must inform the Probate & Protection Division of the Judicial Greffe of the attorney's death and provide them with:
  - (a) the original LPA;
  - (b) all certified copies of the LPA (if any); and
  - (c) where available, evidence of the attorney's death, such as a death notice in newspaper or a copy of their death certificate.

- (ii) The Judicial Greffe will then:
  - (a) affix a note on the LPA, and any certified true copies of the LPA, against the name and details of the deceased attorney stating that that attorney can no longer act;
  - (b) amend the register of LPAs to reflect that the attorney is deceased; and
  - (c) write to the donor (copying in the continuing attorneys) confirming that the register of LPAs has been updated to reflect the death of the attorney and returning the updated original and certified true copies of the LPA if any.

## **8. If a donor changes address**

- (i) An attorney or the donor must write to the Probate & Protection Division of the Judicial Greffe if the donor changes address, for example moves into a care home.
- (ii) The Judicial Greffe will update the register of LPAs to reflect the change of address.
- (iii) Unless requested to provide an amended LPA, for which an administration fee will be payable, the Judicial Greffe will not update the original LPA as those details were correct at the time of registration.

## **9. When a donor dies**

- (i) An attorney must inform the Probate & Protection Division of the Judicial Greffe of the donor's death and provide them with:
  - (a) evidence of their death, for example a copy of the donor's death certificate;
  - (b) the original LPA; and
  - (c) all certified copies of the LPA (if any).
- (ii) The Judicial Greffe will then:
  - (a) affix a note on the LPA that the donor is deceased; and
  - (b) amend the register of LPAs to reflect that the donor is deceased and the LPA is no longer valid.

This practice direction is effective immediately.

8 November 2022