



Acting as an Attorney under a Lasting Power of Attorney

AUTHOR / KEY CONTACT



Kurt Lee
Partner

✉ kurt.lee@la-law.com
☎ 01202 702630

You have taken on a serious responsibility in agreeing to act as an Attorney under a Lasting [Power of Attorney](#) (LPA). We often find that, unfortunately, in the majority of cases, Attorneys do not fully understand their duties and responsibilities, which can lead to problems. Some of the Attorney's actions can lead to the Attorney being stripped of their Attorneyship and may even result in an Attorney also committing a criminal offence.

Here are some of the most important points for you to consider if you are acting as an Attorney under an Lasting power of Attorney:

1.

Mental Capacity Act – statutory principles

You should be careful to ensure that your actions and decisions are compliant with the law. You must understand your important duties and responsibilities, which are set out in the Mental Capacity Act 2005.

2.

Instructions within the Lasting Power of Attorney document

You must follow any restrictions or conditions set out in the LPA. You cannot make decisions limited or restricted by the LPA document unless you seek approval from the Court of Protection.

3.

Conflict of interest

You have an obligation to always act in the best interest of the Donor. If there is a conflict of interest between the Donor and yourself, you must not compromise your duty to act in the Donor's best interest.

4.

Attorney's own bankruptcy

If you are declared bankrupt, your appointment as an Attorney under the Property & Financial Affairs Lasting Power of Attorney is terminated.

5.

The capacity of the Donor

You must support the Donor in making decisions and understand how to ascertain capacity in accordance with the principles of law.

6.

Gifts

Legal limits restrict your authority to make gifts, even if the Donor still has the capacity and instructs you to make a gift on their behalf. If you wish to make gifts outside of the legal limits, you should make an application to the Court of Protection for approval of gifts prior to taking any action.

7.

Sale of property to the Attorney

If you wish to purchase the Donor's property, even at the full market rate, you would need to make a Court of Protection application for authority to purchase the Donor's property.

8.

Loans

You must not profit from your position. If you wish to make a loan to yourself of the Donor's money, you will need to seek authority from the Court of Protection.

9.

Business Lasting Power of Attorney

If the Donor runs their own business, you can only continue the operation of the Donor's business if the Donor prepared a valid Business Lasting Power of Attorney.

10.

Health & Welfare Lasting Power of Attorney

If the Donor does not have a valid Lasting Power of Attorney for Health & Welfare, you cannot make decisions affecting Donor's personal welfare, decisions regarding their medical treatment and healthcare. You can seek appointment as a Health & Welfare Deputy by applying to the Court of Protection.

Our experienced team at Lester Aldridge can provide you with advice as to your obligations, duties and the scope of your authority. Our solicitors can also assist you with applications for authority to the Court of Protection.

If you feel that you could benefit from any assistance, then please get in touch with us at online.enquiries@LA-law.com or call on 01202 702612.