

## A Guide to Lasting Power of Attorney

Gibraltar

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If you are applying for one of our Gibraltar products and you need to use a Lasting Power of Attorney:

1. You will need to have a Gibraltar Property and Financial Lasting Power of Attorney in place.
2. It must be registered with the Supreme Court of Gibraltar and evidence of registration must be provided before we can take instructions from your attorney(s).
3. A foreign Power of Attorney cannot be used for business arising in Gibraltar as it does not have the required authority [Lasting Powers of Attorney and Capacity Act 2018].



## Purpose of this guide

The purpose of this guide is to help you to understand how a Property and Financial Lasting Power of Attorney can be used in Gibraltar, the benefits of setting up one, the requirements outlined by the Gibraltar Courts, the costs involved and the operation of your Lasting Power of Attorney.

## What is a Lasting Power of Attorney ('LPA')?

An LPA is a legal document that gives one or more persons ('donee' or 'attorney'), whom you trust, the authority to act on your behalf ('donor').

In Gibraltar, there are two types of LPA:

**1. Property & Financial - deals with your property any money**

**2. Health & Welfare - deals with your health and personal welfare**

The two Gibraltar LPAs were introduced by the Lasting Powers of Attorney and Capacity Act 2018. **In this guide, we will focus on the Gibraltar Property and Financial LPA.**

## Why should I set up an LPA?

- You can only set up an LPA if you are aged 18 or over and whilst you have mental capacity. This means you must be capable of making decisions for yourself.
- It is a lot harder and more expensive for someone to manage your financial affairs once you have lost mental capacity. Therefore, it is important to set up and register an LPA in advance.
- Without an LPA, your spouse, family, or friends cannot make decisions on your behalf. It does not matter how young or old you are, having an LPA in place is important at any age to make sure your finances are managed as you want.
- It is important to think carefully about who you choose to manage your affairs and to discuss your wishes with them.

## I already have a Power of Attorney in place in the UK, is it valid in Gibraltar?

A Power of Attorney issued and registered outside Gibraltar has no legal authority in Gibraltar. Even if you already have a UK LPA in place, you will still need to set up a Gibraltar LPA before your attorneys can act on your behalf in relation to your financial affairs arising in Gibraltar.

The Law of Gibraltar applies as the specified law governing Gibraltar LPAs because:

1. You are or you have been previously habitually resident in Gibraltar, OR
2. You are a British Citizen most closely connected with Gibraltar, OR
3. In relation to your property in Gibraltar.

## What decisions can my attorneys make with a Gibraltar Financial and Property LPA?

A Gibraltar Financial and Property LPA can give your attorney(s) named in the LPA authority to make decisions about any or all your property and financial affairs arising in Gibraltar. However, your attorney(s) must act in your best interests. These decisions may include:

- buying or selling your property
- opening, closing, or operating any of your bank, building society or other accounts
- giving access to your financial information
- claiming, receiving, and using, (on your behalf), all benefits, pensions, allowances, and rebates
- receiving any income, inheritance, or other entitlement on your behalf
- dealing with your tax affairs
- paying your mortgage, rent and household expenses
- investing your savings and pensions
- making limited gifts on your behalf
- repaying interest and capital on any loan taken out by you.

## What happens if I lose mental capacity?

If you lose your mental capacity and you have not set up an LPA, your family or friends will not automatically have the authority to make financial decisions on your behalf. They will not be able to manage your bank accounts, speak on your behalf or even use your money to pay your expenses.

## Deputies and Gibraltar Court of Protection

Without an LPA in place, loved ones and friends will then need to apply to become a **'Deputy'** to make decisions on your behalf. This application will have to be made to the Gibraltar Court of Protection. Similar to the Gibraltar LPAs, there are two types of Deputies:

- a Deputy for property and financial affairs, taking charge, for example, of paying bills, and
- a Deputy for personal welfare, making decisions about medical treatment and how someone is looked after.

Applying for Deputy status can be a long and costly process, which can be avoided by advance planning and putting an LPA in place before mental capacity is lost.

## Can I have more than one attorney?

You can appoint more than one attorney. You also can name replacement attorneys in case one or more of your attorneys are unable to continue acting on your behalf.

## How do I apply for a Gibraltar LPA?

1. You can use one of the templates found on HM's Government of Gibraltar website to apply for a Gibraltar LPA at <https://www.gcs.gov.gi/lasting-powers-of-attorney>, or
2. You can instruct a lawyer who has experience in dealing with the Lasting Powers of Attorney and Capacity Act of 2018 to help you with drafting and registering your LPA.

## Application Process

### Choose your attorney(s)

This may be a family member, friend or lawyer

### Complete Application Form

You can choose to complete the forms yourself or you can instruct a lawyer

### Sign in the presence of two witnesses

Check for restrictions on who can sign as witness

Send completed, witnessed and signed LPA Application Form(s) to the LPA Registrar to be registered in the LPA Register at the Supreme Court of Gibraltar.

### Pay Registration Fee

If there are any errors from the prescribed format, the LPA Registrar will contact you and ask for these to be amended

If there are no mistakes in the LPA submitted for registration, the Registry will return the LPA with a certificate

### Use your registered LPA

You can then use this paperwork to prove you have a valid LPA and the attorney has the authority to act on your behalf

### Will my LPA be accepted by Gibraltar businesses?

Yes, however, the LPA is only effective and can only be used once it has been registered. If it is not registered, your attorneys will have no authority to act on your behalf.

### How much does it cost to set up a Gibraltar LPA?

The fees associated with the application and management (as 01.08.2024) of Gibraltar LPAs are listed below:

1. Registration of an LPA including certificate of registration ..... £121.50
2. Repeat application fee (where LPA submitted for registration is defective) ..... £61.00
3. Fee for the revocation of a registered LPA..... £30.00
4. Fee for a search of the LPA Register..... £12.00

Remember there are two types of LPA in Gibraltar. A Property and Financial LPA only covers your property and financial affairs. If you would like your attorneys to make decisions about your health and welfare, you will need to pay to set up and register a Health and Welfare LPA, even if you are using the same attorneys for both types of LPA.

### Can I still make my own financial decisions?

You can continue to make your own financial decisions, such as buying and selling property, dealing with your bank account, buying insurance products, etc. However, you can include special instructions, restrictions and conditions in your LPA allowing your attorneys to make decisions either:

- as soon as the LPA has been registered, or
- only when you do not have mental capacity, or
- about what your money can or cannot be used for
- about if your attorneys shall act:
  - **‘Jointly’** for some or all decisions
  - **‘Jointly and severally’** for some or all decisions

### Can I cancel my LPA?

You can cancel your LPA at any time, as long as you have the mental capacity to do so. Even if the LPA has been registered, you can still cancel it at any time by contacting the LPA Registrar at the Supreme Court of Gibraltar.

### Can I use my Gibraltar LPA in the UK?

It is suggested that whilst you have mental capacity, you take the time to create separate Financial and Property LPAs in the jurisdiction in which you reside as well as anywhere else you hold assets for ease of administration when they are needed.

### Does the LPA affect the wishes and instructions I have expressed in my Will?

An LPA does not give your attorneys the authority to make changes to your Will (if you have one) while you are alive or after you have died. It is advisable to set up a Will so that when you die, your estate is managed in keeping with your wishes.

### What happens to my LPA when I die?

Your LPA expires when you die, and all authority given to your attorneys end. Your attorneys, however, must send your registered LPA, any certified copies of the LPA and a copy of your death certificate to the Registrar. If you have made a Will, your executors will begin to manage your estate.

### Glossary of terms

**Best interests:** Best interests mean thinking about what is best for the person, not about what anyone else wants.

**Capacity:** The mental ability to make decisions about a particular matter at a particular time. The legal definition of capacity can be found in the Mental Health Act 2016.

**Court of Protection:** The Court that makes decisions and rulings in relation to those who lack capacity.

**Deputy:** A person appointed by the Court of Protection to make decisions for someone who has lost capacity and for whom no LPA is in place.

**Donee:** Someone who has the legal right to make choices and decisions on behalf of the donor, within the scope of the authority granted by the LPA. Donees are also sometimes called attorneys.

**Donor:** The person making an LPA, who appoints a donee to make decisions on his/her behalf.

**Lasting Power of Attorney:** A legal document which appoints a donee in the event that you lose the capacity to make your own decisions. There are two types: Health and Welfare LPAs and Property and Financial LPAs.

**Lasting Powers of Attorney and Capacity Act 2018:** An Act of Parliament about how to support and protect people who cannot make their own decisions. The Act makes it clear who can take decisions, in which situations, and how they should go about this.

**Mental Health Act 2016:** An Act of Parliament to provide for the care and treatment of mentally disordered persons.

**Property:** The things you own (e.g., a house, car, bank accounts).

**Witness:** Someone who signs an LPA to confirm they have witnessed the donor signing and dating the LPA.

For further information, please contact your dedicated business development manager or email: [sales@stmgroup.online](mailto:sales@stmgroup.online)