



**St Helena
Government**

How to be a property and finances donee

1. Getting started

This guide is for people who have been appointed donees under a lasting power of attorney for property and financial decisions or are considering taking on that role. It provides a summary of the information you will need as a prospective or actual donee. However please do ensure that you seek legal advice as this guidance is not exhaustive as to the rights and responsibilities of a donee.

Being a donee is an important responsibility. You need to understand fully what it involves before agreeing to accept the position – and you can refuse to do it if you feel uncomfortable about it.

An A-Z glossary at the end of this guide explains terms you might not understand.

1.1 What is a donee?

In law, a donee under a lasting power of attorney is someone who is chosen to act on behalf of someone else.

When someone (called the ‘donor’) makes a lasting power of attorney (LPA), they pick people to make decisions for them in case they lose mental capacity. **Mental capacity means the ability to make your own decisions.**

The people chosen to help donors are donees. Donees don’t need legal training but they do need to be trustworthy and reliable.

A donee for property and financial affairs – to use the full legal term – also needs to know enough about money matters to carry out the role well.

1.2 What is an LPA?

An LPA is a legal document that names the donees who will make decisions if the donor can’t. You can make LPAs for financial decisions, or decisions about health and welfare, or both.

This guide is for donees making financial decisions for someone else. There’s a separate guide for health and welfare donees.

Some donors appoint a donee to take on both roles.

1.3 Who can be a donee?

Anyone aged over 21 who has mental capacity and isn't bankrupt can be a property and financial affairs donee. If you become bankrupt in the future, you must tell the Public Guardian (PG) because you will no longer be able to act as donee.

1.4 Should you be a donee?

The person asking you believes that you're the right person to look after their property and finances. If you haven't already accepted, you need to think carefully about whether you're prepared to carry out the role.

Things to think about:

- Do you have the financial skills to act for the donor? Would you be able to manage their bank accounts, pay their bills, look after any investments and make a decision about whether to sell their house?
- Do you have the time to help them if ever they can't make decisions for themselves?
- Do you know them well enough to help them? If not, can you spend time now finding out what they like?
- Would you be confident making decisions in the best interests of the donor, even if other people wanted something else?
- If the donor is appointing other donees and you'd have to work together – would you find that easy or would there be conflict?

The main rule for donees is that they must always make decisions in the donor's best interests – not their own or anybody else's.

1.5 What sorts of financial tasks will I do for the donor?

Donors can leave specific instructions for their donees when they create an LPA but looking after someone's property and finances usually covers:

- using their bank account;
- claiming and using their benefits, pensions and allowances;
- dealing with their tax;
- paying their household, care and other bills;
- making gifts on their behalf;
- making and selling investments for them;
- buying or selling their home;
- maintaining or repairing their home;
- using their money to buy things the donor needs, such as specific health equipment.

1.6 When do I start acting as a donee for property and financial affairs?

You can act under an LPA only if it's been registered with the PG.

Once the LPA is registered, you can start using a property and financial affairs LPA when the donor has lost mental capacity in relation to the specific decision relating to their property and financial affairs that has to be made.

If you're not sure if the LPA is registered, check with the donor or look at the LPA document. If it is registered, every page will have a mark saying 'Validated-PG'. If you are still not sure, you can ask the PG.

If you're unsure about the donor's mental capacity, you, the donor or someone else can arrange for an assessment by a GP or other medical professional.

1.7 Register now

You can express an interest to register through the Safeguarding Team or the Mental Health Team. If you prefer you can contact the PG.

2. What does the PG do?

The PG registers LPAs (if they are not so registered they are not created and confer no authority) and investigates concerns about how donees are carrying out their role.

People who might raise concerns about possible misuse of the donor's money or property include fellow donees and family members.

The PG has a lot of information about being a donee but he cannot give legal or financial advice – for that, you could speak to the public solicitor or a professional financial advisor.

Public
the Castle – Jamestown

Guardian

+(290) 22470 ext 265

paul.mcginnety@sainthelena.gov.sh

3. What to do now as a donee

3.1 If the donor still has mental capacity, talk to them about how they look after their finances

For example, do they:

- give birthday gifts to children or other friends and family (and to what value)?
- like spending on clothes, music or trips (and how much)?
- donate to particular charities (and how much)?
- want to sell or rent out their home if they move into a residential care home?
- prefer to keep a minimum bank balance?

Write these things down – or ask the person to write down what's important to them.

You may know the person who has made the LPA well. So treat this as a chance to understand them even better.

The more you know about them, the better you'll be able to make decisions if ever they cannot.

If they are no longer able to talk to you about their wishes and beliefs, then ask others who know them well – friends, family, colleagues – when making decisions.

You can also ask professional advisers for their views, such as a solicitor or an accountant, if it is in the donor's best interests to do so.

3.2 Ask the donor where they keep financial information

For example:

- benefits, pensions and tax letters.
- bills and bank statements.
- the deeds of any property they own.

3.3 Get contact details and certified copies of the LPA

Ask the donor:

- for contact details (for example, of their accountant, solicitor);
- where they keep the LPA document.

If the donor has mental capacity, you can ask them to make official copies of their registered LPA document – known as 'certified' copies. You can use a certified copy in the same way as the original – to prove you've got permission to make decisions on the donor's behalf.

The PG keeps a record of all LPA documents and will be able to provide a copy if a copy is lost or destroyed.

If the donor lacks mental capacity, a solicitor can also make official copies.

Banks and other financial bodies need to see the original or a certified copy of the LPA before they'll give you access to the donor's accounts. They may also need to see proof of your address and the donor's.

3.4 Set up a separate account for the donor

It is good practice for property and finance donees to keep the donor's finances separate from their own or anyone else's. This is to avoid confusing the donor's financial affairs with your own.

Sometimes there is a good reason not to keep the donor's finances separate. For example, you may be your wife or husband's donee and have held a joint account for many years.

Contact the PG if you're unsure about setting up a separate donee account.

3.5 Start recording your decisions as a donee

It is good practice as a property and financial affairs donee to keep an accurate record of all the financial decisions you make on the donor's behalf.

Record all significant transactions and keep receipts for all major purchases you make for the donor.

As a donee, you must look after the donor's finances with even more care than your own.

4. Your role as a donee

4.1 What does mental capacity mean?

As a property and financial affairs donee, you have to make decisions when the donor no longer has mental capacity relating to the property and financial affairs of the donor.

If someone doesn't have mental capacity, they lack the ability to make specific decisions – in this case, financial decisions – at the time they need to be made.

Someone may lack mental capacity because of a mind or brain problem such as:

- dementia.
- a serious brain injury.
- a severe mental illness.

The donor might be able to make some decisions, such as what they want to buy on a shopping trip, but be unable to understand and make more complex decisions, such as about selling their house.

Their mental capacity may come and go, so they may be able to make decisions at some times but not others.

4.2 Mental capacity: five principles

The Mental Health and Mental Capacity Ordinance 2016 which governs how donees can act sets out five rules about people without mental capacity. The principles affect you as a donee in these ways:

1. A donor must be assumed to be able to make a decision unless it is established that they cannot.
2. Before deciding that a donor does not have the capacity to make a decision, you should take all practical steps to help them make the decision.
3. If a donor makes an unwise or eccentric decision, this does not automatically mean that they lack capacity to make the decision. Many people with capacity make unwise decisions from time to time.
4. Any decision made on behalf of the donor when they lack mental capacity must be in their best interests.
5. When making a decision on behalf of a donor without capacity, you must consider whether the outcome can be achieved in a way that is less restrictive of the donor's rights and freedoms.

4.3 How can I tell when someone has mental capacity?

The law says you need to reasonably believe that the donor lacks mental capacity in relation to the decision in question.

Sometimes that just means considering the kinds of decisions they've been able to make in the past and asking: Is it reasonable to think they probably still will – or won't – be able to make this decision today?

For example, if they have become confused in the past about decisions such as making investments or selling their house, it's reasonable to conclude that they will still need help making such decisions – or be unable to make them.

But if they are usually able to decide what gifts you should buy relatives on their behalf, it would be unreasonable **not** to ask them to make such decisions.

If the donor's mental capacity changes you might need to check more often which decisions they can make. But if the donor's condition stays the same or is deteriorating, you might not need to check their capacity every day for decisions like paying bills and grocery shopping.

You can also ask yourself a series of questions to check the donor's mental capacity:

- do they have a general understanding of the decision that needs to be made?
- do they have a general understanding of the consequences of the decision?
- can they retain and weigh up this information to make a decision?

4.4 How to help the donor make decisions

Sometimes you'll need to choose the right time and place to help the donor make decisions or try different ways of communicating.

For example, the donor may be more responsive if you choose the right setting – they may be less confused in their home, rather than in an unfamiliar environment.

Or perhaps the donor is usually livelier in the morning than later in the day. That may be the best time to involve them in decision-making.

Sometimes the donor may just need more time for you to explain a decision.

Different ways of communicating might also help:

- try using pictures or sign language to explain a decision to the donor
- perhaps the donor can point, squeeze your hand, blink, nod or show you in some other way what they want even if they can't say anything

Try to stay calm. It can sometimes take a while to make a decision if someone is ill or unable to speak.

If you're still unsure whether the donor can understand and make decisions, you could ask their doctor to assess them. You could also ask friends, family and care staff who see a lot of the donor.

4.5 Example: Telling when someone has mental capacity¹

When planning for her retirement, Enid made a lasting power of attorney for property and financial affairs naming her son, Anthony, as her donee. She has now been diagnosed with dementia, and Anthony is worried that she's becoming confused about money.

Anthony starts by assuming that Enid has mental capacity to manage her financial affairs. Then he considers each of Enid's financial decisions as she makes them, helping her if she needs it.

Anthony goes shopping with Enid and sees she is quite capable of checking her change to make sure it's correct. But when she needs to make a decision about selling her home, Enid gets confused. She still does not understand the implications after Anthony explains how to go about doing this.

Anthony concludes that Enid has mental capacity to deal with everyday financial matters but not more difficult decisions at this time. He is therefore able to use the LPA for the difficult financial choices his mother cannot make.

4.6 How do I make decisions in the donor's best interests?

When you do make decisions for the donor, the law says every decision must be in their best interests. You mustn't make a decision to suit yourself or other people – it has to be right for the donor.

Before making decisions for the donor:

- check the LPA for any instructions they've included – the law says you have to follow them;
- try to follow any preferences the donor has included in the LPA – you don't have to follow them but you should consider them when making decisions;
- consider the values and wishes of the donor – including any moral, political or religious views they have held;
- think about what the donor would have decided if they could;
- don't make assumptions based on the donor's age, gender, ethnic background, sexuality, behavior or health – think about what they as an individual would want.

You should also ask whether the donor might regain mental capacity – for example, if their condition improves or they learn new skills. If so, can the decision wait until then?

Asking other people

If you're making a decision about day-to-day matters, such as household spending or buying small gifts, friends, family, carers or care home staff may be able to advise you.

If you're making a big financial decision, such as whether to sell the donor's house, then you may need to consult a professional such as an accountant or a solicitor.

Best interests meetings

If a decision is complicated or on a topic you don't know much about, you could consider calling a 'best interests meeting'.

As part of these meetings, a group of people involved in the care of the donor gather to share views on the best course of action. This process may help you to make a decision in the donor's best interests. Professionals involved in the donor's treatment or care can arrange a best interests meeting.

Remember: keep a record of important decisions, who you consulted, any disputes and why the decision was in the donor's best interests.

4.7 What can I not decide?

You cannot:

- do anything that's not allowed by the LPA;
- make decisions about the donor's health and welfare – unless the donor also named you in an LPA for these decisions;
- make decisions that discriminate against the donor on the basis of their age, gender, sexuality or ethnic background.

5. What should I do if... ? (Common property and finance decisions)

5.1 There's more than one donee

When there's more than one donee, the donor can specify how they must make decisions:

- together (also called 'jointly'), which means all the donees have to agree on the decisions;
- separately or together (also called 'jointly and severally'), which means donees can make decisions on their own or with the other donees; or
- together for some decisions and separately or together for other decisions, which means all donees must agree on decisions specified by the donor, but can make others on their own.

If the donor does not specify how the donees shall make decisions, it is assumed that the donees must make them together ('jointly').

Joint donees have to agree on decisions but don't necessarily have to carry them out together. For example, as long as you have evidence of a joint agreement, only one donee might need to sign a property deed for the donor.

However, some organisations such as banks might require all joint donees to be present to withdraw funds, for instance. Check with the organisation about its policies.

5.2 Example: Making decisions together

Brett and Lucy are joint property and financial affairs donees for their father, Tim, who has developed Alzheimer's disease and is moving into the CCC.

Brett and Lucy have to decide what to do with their father's house. As joint donees, they must agree on every financial decision they make for Tim.

Brett thinks it is in Tim's best interests to sell the property and invest the money for Tim's future care. Lucy says it's in their father's best interests to keep the house, because he has always enjoyed spending time there.

Brett and Lucy first try to get Tim's views but he seems to show little understanding of the decision that needs to be made. So they meet with the rest of the family to discuss what to do with the house.

The donees listen to other family members before agreeing that it would be in their father's best interests to keep the property for as long as he can enjoy visiting it.

5.3 I want to claim expenses or be paid as a donee under a LPA

If you wish to claim expenses or be paid as a donee you will require court approval. You will need to be able to explain to the court why the expenses have been or will be incurred or why you consider that payment is reasonable.

5.6 I want to pay professionals to help manage the donor's estate

As a donee, you can employ professionals such as accountants, solicitors and regulated financial advisers to help manage the donor's affairs.

However, it may be that you need to first seek authorisation from the court before doing so.

5.7 I want to sell the donor's home

As a donee, you may have legal authority to sell the donor's property. However, a house or flat may be the donor's main asset, so you need to consider some crucial questions first:

1. Does the donor have the mental capacity to make a decision about whether to sell the property? If so you must not make the decision on their behalf.

2. Does the LPA contain instructions saying you cannot sell their property? If so you must not sell the property.
3. If you have authority to sell the donor's property, is it in their best interests to do so? For example, do you need to sell the property to cover the donor's debts? Can they maintain their quality of life without their home being sold?

Buying the donor's property or selling it more cheaply

You'll need to apply to the Supreme Court if:

- you're selling the donor's property – not only their home but also other valuable items such as cars or jewellery – below market value.
- you want to buy a valuable item of the donor's property yourself.

If you don't apply to the court, the LPA may be cancelled and action may be taken against you if you haven't acted in the donor's best interests.

5.9 I want to make a gift from the donor's funds

Giving gifts on the donor's behalf can be important in helping to preserve their relationships with close family and friends. However, there are strict limits on the gifts you can give as a donee.

The law says donees can normally give gifts only on customary occasions, such as birthdays, anniversaries or on other occasions when presents are usually given between family or friends. The value of the gift must be reasonable, having regard to all the circumstances and in particular the size of the donor's estate.

Before making a gift, ask yourself:

- Does the donor's LPA contain specific instructions or preferences about gifts?
- Would the donor have wanted to make a gift like this if they still had mental capacity?
- Is the value of the gift similar to gifts the donor previously gave to this person or people in a similar position?
- Is the gift of the right value for the donor's estate – or is it too valuable, for example?

If you want to make a gift which does not fall within the above categories or situations of customary occasions, you must apply to the Supreme Court for permission.

You don't have to give any gifts as a donee, unless your LPA instructs you to. Don't let families and friends pressure you into giving gifts using the donor's money.

Keep a record of gifts you do give and be prepared to explain any that might seem too valuable.

5.10 Example: Giving gifts

Hannah is elderly and lives in Cape Villa. Sometimes she can make decisions but often she can't. Her nephew David is her property and finances donee. He wants to give Hannah's granddaughter Ruth a birthday present from her.

Before she started to lose her ability to make decisions, Hannah was very generous. However, her estate is diminishing and David is worried about how to meet Hannah's expenses.

Although Hannah would have liked to have given a generous present, David decides that it is in her best interests to give something more modest. This way, Hannah has been helped to celebrate her granddaughter's birthday ceremony, as she'd have wanted, but her money and her future are safeguarded.

5.11 I'm asked to make decisions about the donor's health and welfare

As a property and financial affairs donee, you cannot make decisions about the donor's health and personal care unless they have also appointed you as a health and welfare donee.

If the donor has appointed someone else as their health and welfare donee, it can be good practice for them to consult you when their decisions concern financial matters. For example, they may be helping to decide where the donor should live.

5.12 I want to buy things to make the donor feel better – not just manage their finances

Managing the donor's finances in their best interests is about more than just paying regular bills. You should also consider spending on things that will maintain or improve their quality of life, for example:

- new clothes or hairdressing.
- decorating their home or room in the care home.
- paying for extra support so the donor can go out more, for example to visit friends or relatives.

As with gifts, your purchases must be in the best interests of the donor and in keeping with the size of their assets.

5.13 I want to hand over my donee duties to someone else

You can't do this. You can seek expert advice about the donor's property and finances but the law says you can't delegate your decision-making. Ultimately, you have to make the decisions.

You can 'disclaim' your donee-ship if you no longer want to carry out the role. See 'When do I stop being a donee?' later in this guide.

5.14 There's a dispute about my role as a donee

Sometimes disputes and disagreements occur over the way donees are handling a donor's property and finances. Disputes can occur:

- between the donee(s) and donor;
- between donees themselves;
- with others who have an interest in the donor, such as family members.

Disputes with the donor

If the donor disagrees with a decision you are making but you reasonably believe they lack capacity to make the decision, you can make it as long as:

- it is in the donor's best interests; and
- no instructions in the LPA prevent you from making the decision.

If you are unsure about making a decision, contact the PG.

If the donor disagrees with a decision you are making and has capacity then you do not have the right to make that decision.

Disputes with others

If donees acting jointly can't agree on a decision for the donor, contact the PG for advice. The PG can also advise on resolving disputes between donees and friends and family members of the donor.

You should keep a record of any disputes about your donee-ship and how they were resolved.

6. Protecting the donor

As well as offering donees advice and support, one of the roles of the PG is to protect people without mental capacity from abuse or exploitation.

Abuse is anything that goes against a person's human and civil rights. It can be deliberate or can happen because a donee doesn't know how to act correctly or lacks the right help and support.

Abuse of property and financial affairs donee-ships can include:

- theft or fraud.
- undue pressure upon the donor to make a financial decision.
- misuse of property, possessions or benefits.

6.1 The public guardian's role

The PG or his representative, may arrange to meet you if he is investigating concerns about how you are acting as a donee.

The PG will usually meet you and the donor, or the donor alone, and discuss how you are managing your role as donee under the LPA. The PG will sometimes also contact others involved, such as family members, accountants or banks. On rare occasions, the PG might also be asked to investigate suspected abuse of a donor.

The PG will refer serious cases of possible abuse to the court, which may revoke (cancel) the LPA if it decides that:

- somebody has used fraud or too much pressure to get the donor to make the LPA.
- the donee has done something the LPA doesn't allow them to do.
- the donee is behaving in a way that isn't in the donor's best interests.

6.2 Penalties

If you don't carry out your duties properly as a property and finances donee, you may be ordered to pay the donor back for any losses they've suffered as a result. The PG may refer cases of suspected fraud to the police.

6.3 Example: Investigations and subsequent Supreme Court

Marta made an LPA appointing her niece, Karolina, as her property and financial affairs donee. When Marta lost mental capacity to make financial decisions, Karolina registered the LPA with the PG and now looks after Marta's financial affairs.

But Marta's nephew Edward suspects that Karolina is using their aunt's money to pay off her mortgage. Edward calls the PG, who arranges to meet Marta and Karolina and to assess the facts in the case.

The PG might suggest the case go to court to consider whether Karolina has behaved in a way that:

- goes against what the LPA says she can do; and/or
- is not in Marta's best interests.

The PG will finally decide whether the court should be involved. If the court thinks that Karolina is abusing her position, it may cancel the LPA.

7. When do I stop being a donee?

You will stop being a donee if:

- the donor dies (the LPA will automatically end);
- the donor revokes the LPA whilst he has mental capacity;

- you choose to stop being a donee;
- you become bankrupt;
- you are the donor's husband, wife or civil partner and get divorced or separated (unless the LPA says otherwise);
- you lose mental capacity and can't make decisions anymore;
- the court ends the LPA.

7.1 If the donor dies

Send the following documents to the PG if the donor dies:

- a copy of the death certificate;
- the original LPA; and
- all certified copies of the LPA.

7.2 If you want to stop

If you decide to give up the role of donee, you'll need to contact the PG and you should tell any other donees named in the LPA

If you're the only donee or have to make joint decisions with other donees and there are no replacements, the LPA usually ends if one of you stops.

If the LPA ends and the donor lacks capacity, someone will need to apply to the Supreme Court if they want to make decisions for the donor.

8. Glossary

8.1 Abuse

Abuse is a violation of an individual's human and civil rights by another person or people. Abuse may be a single act or repeated acts. Or it may be an act of neglect or a failure to act.

For a property and financial affairs doneeship, abuse may occur when a vulnerable person is persuaded to enter into a financial transaction they haven't consented to or cannot consent to.

8.2 Donee

Someone appointed under an LPA to make property and finance or personal welfare decisions for someone else (the 'donor').

8.3 Best interests

Donees should always think about what action is in the donor's best interests when making a decision. You should also consider the donor's past and present wishes and think about consulting others.

8.4 Code of Practice

A guide to the Mental Health Ordinance and Code of Practice 2016 can be found on the SHG website.

8.5 Dementia

A group of symptoms that can include problems with memory, language or understanding. Strokes or diseases such as Alzheimer's can cause brain damage leading to dementia.

Dementia symptoms can include:

- loss of memory
- difficulty in understanding people and finding the right words
- difficulty in completing simple tasks and solving minor problems
- mood changes and emotional upsets

8.6 Donor

Someone who creates an LPA allowing one or more persons ('donees) to make financial or health and welfare decisions for them.

8.7 Lasting power of attorney (LPA)

A legal instrument that allows one or more persons ('donees) to make financial or health and welfare decisions on behalf of someone else (the 'donor').

8.8 Least restrictive care

If a person doesn't have mental capacity, decisions taken on their behalf must restrict their rights and freedoms as little as possible, while keeping them safe.

8.9 Mental capacity

The ability to make a decision about a particular matter at the time the decision needs to be made.

8.10 The Mental Health and Mental Capacity Ordinance 2016

This Ordinance is designed to protect people who can't make decisions for themselves. This could be due to a mental health condition, a severe learning disability, a brain injury or a stroke. The act allows adults to make as many decisions as they can for themselves and for a donee or others to make decisions on their behalf.

8.11 Property and financial affairs

- Any possessions owned by a person (such as a house or flat or jewellery);
- Any income received;
- Any expenditure.

8.12 Wilful neglect

A failure to carry out an act of care by someone who has responsibility for a person who lacks mental capacity to care for themselves

1. The examples in this guide use imaginary characters and situations to help you with your donee decision-making ←