Revocation of an Enduring and Lasting Power of Attorney by a donor

- An Enduring and Lasting Power of Attorney (EPA/LPA) is a deed (s1 Powers of Attorney Act 1971)
- A deed can be revoked by a deed, or by a Court determining that the donor’s conduct has revoked the deed (Re E (EPA) [2000] 1FLR 882)

When can the donor revoke their EPA/LPA?

- The donor of a registered LPA can revoke their LPA, so long as they have mental capacity (s.13(2) MCA 2005: SAD & ACD v SED [2017] EWCOP 3)
- The donor of a registered EPA can only revoke their EPA, if the Court of Protection confirms they have capacity and done what is necessary in law to revoke the power (Sch 4, paras 15(1)(a) & (b) & 16(3) MCA 2005)
- The donor of an unregistered EPA can revoke their EPA, so long as they have mental capacity (Re KJP [2016] EWCOP 6)

How can an LPA/EPA be revoked?

- Making a new LPA does not automatically revoke a previous EPA or LPA (Re E (EPA) [2000] 1FLR 882: Re Cloutt, 7 November 2008)
- Revocation can be done separately or included in the body of a subsequent LPA, by including appropriate wording in the instructions box of the 2015 prescribed form or continuation sheet
- Revocation can be conditional on the registration of the LPA, to avoid any gap in decision making
- Conditional revocation would not be appropriate where there is a safeguarding concern: revoke immediately

Procedure following revocation of a registered LPA

- Registration is not evidence that the LPA is valid, but registration is required for the LPA to be ‘created’ (s.9(2)(b) MCA 2005)
- Under common law, the revocation is effective immediately the donor has signed, and it has been witnessed
- Reg 21 of the LPA, EPA and Public Guardian Regulations 2007 provides that once the donor revokes the LPA:
  (a) a donor must notify the Public Guardian that they have done so; and
  (b) notify the attorney (or, if more than one, each of them) of the revocation.
- The Public Guardian will notify the donor and attorney when the LPA has been cancelled (Reg 21 (4)) and update the LPA register (Sch1, para 21 MCA 2005)

Revocation of one of a joint and several attorney

- It is possible for the donor with capacity to revoke the appointment of one attorney where there are more than one appointed to act jointly and severally, leaving the remaining attorney(s) to act.
- Such revocation does not allow a replacement attorney to step in, as revocation of an original attorney is not a statutory prescribed ‘terminating event’, which provides for a replacement to step in (s.13(5)&(6, MCA 2005).

This Briefing Note was prepared by Caroline Bielanska TEP, Caroline Bielanska Consultancy, a member of the STEP Mental Capacity Special Interest Group, 5 February 2019

For the law, guidance, process, precedents and case law on LPAs, see Cretney & Lush on Lasting & Enduring Powers of Attorney (8th Edition) (Lexis Nexis), Lush & Bielanska