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POWERS OF ATTORNEY

A Power of Attorney is a legal document where a person gives another person or persons (the Attorney/Attorneys) authority to make certain decisions on his or her behalf.

There are two types of Power of Attorney – the General Power of Attorney and Lasting Power of Attorney.

General Power of Attorney:

A General Power of Attorney (GPA) is a simple document that allows you to appoint an Attorney/Attorneys only in relation to your property and affairs. It is really only to be used when you want someone to act for a finite/ limited period, or for a specific event (e.g. the sale of your property if you are out of the country), and when your age and health make it unlikely that you could lose mental capacity for the time which the GPA will need to be used.

A GPA cannot be used to authorise an Attorney to make decisions about your health or welfare, and the document ceases to have effect if you lose mental capacity.

We would only recommend the use of a GPA as a “stop gap” measure, or for a specific event. If you want to cover the situation whereby you lacked sufficient mental capacity to handle your affairs at a later date, then a Lasting Power of Attorney is the only option for you.

Lasting Powers of Attorney:

There are two types of Lasting Power of Attorney (LPA):

1. A *property LPA*, which allows your Attorney to deal with such of your property and finances as you specify.

2. A *welfare LPA*, which allows your Attorney to make welfare and health care decisions on your behalf only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

Your Attorney

As with any Power of Attorney, it is an important document and you should take care whom you appoint, as they should be trustworthy and have the appropriate skills to make the necessary decisions.



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If you appoint more than one Attorney, you can appoint them to always act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some decisions and jointly and severally for others, although this should only be done with advice, as it may cause problems when it comes to your Attorneys actually making those decisions.

You may also choose to appoint a successor to your Attorney, in case they die, or otherwise cannot act for you.

When can the Attorney act?

The Attorney will only be able to act when the LPA has been signed by all parties (i.e. you and your Attorney/s), and certified by a person (such as the advising Solicitor) that you understand the nature and scope of the LPA, and that you have not been unduly pressured into creating the document. The certificate will also need to confirm there has not been any fraud or another reason why the document cannot be completed. The LPA must then be registered with the Office of Public Guardian before it can be used.

A property LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The welfare power can only be used if you lack mental capacity to make a welfare or medical decision.

In making any decision for you, your Attorney/s must always follow the principles of the Mental Capacity Act 2005, act in your best interest at all times, and wherever possible consult with you.

Existing Enduring Powers of Attorney

An Enduring Power of Attorney (EPA) made before 1st October 2007 will continue to be valid in respect of your property and affairs. You will however now not be able to make or vary existing EPAs, but provided you retain your mental capacity, you will be able to revoke them. The procedure for registering EPAs on the donor's mental incapacity continues to apply.

EPAs only relate to property and affairs, so if you want to appoint an Attorney to make welfare and medical decisions for you, you will need to make a new welfare LPA.

What happens if you have not made an LPA or EPA and your mental capacity is impaired?

If you or a loved one lacks capacity to make a financial/welfare decision for yourself, then it may be necessary for an application to be made to the Court of Protection for an appropriate



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order – e.g. appointing another person (a Deputy) to make decisions on your behalf. Unfortunately this is not only a slow process but also a costly one.

If you wish to avoid problems in the future, be they about your finances or welfare, we always recommend you retain control of the situation and execute an LPA.

For more information on Powers of Attorney or other matters relating to Probate, Wills and Trusts please contact the Probate Department of Burningham & Brown.