

Powers of Attorney

Why do you need a Power of Attorney?

Most people are aware that if you make a Will you can decide what happens to your property and possessions after your death, but what happens if you are mentally unable to make decisions about your property and possessions or health and welfare, because of accident or illness?

Age is not important; an accident or illness can happen at any age, but as people get older it becomes more important to consider what would happen if you become unable to deal with your affairs. Your family may not be able to make decisions on your behalf unless they have the legal authority as your attorney to do so.

Mental Capacity Act 2005

The Mental Capacity Act 2005 makes provision for people to choose someone to manage not only their finances and property but also to make health and welfare decisions on their behalf.

How to Grant Control of Your Affairs

The easiest way is to appoint someone that you trust as a Lasting Power of Attorney. You may appoint one or more attorneys. They must be aged over 18, not bankrupt and have the capacity to act as a Lasting Power of Attorney who will be able to make decisions on your behalf.

Lasting Powers of Attorney

There are two types of Lasting Power of Attorney:

Property and Affairs – allowing an attorney to make decisions on things such as paying bills, dealing with the bank, collecting benefits and selling your home.

Personal Welfare – allowing decisions on things such as treatment, care, medication, where you live.

Many people make two Lasting Powers of Attorney to cover both Property and Affairs and Personal Welfare. They can be used at any time in the future if you are not able to make your own decisions.

How to make a Lasting Power of Attorney

There are separate forms for making a Property and Affairs Lasting Power of Attorney and a Personal Welfare Lasting Power of Attorney which can be obtained from the Office of the Public Guardian.

You will need to fill in the forms and have them signed by all the relevant parties. The Lasting Power of Attorney must be registered before it can be used. There is a charge to register the Lasting Power of Attorney but you may be entitled to a fee exemption if you cannot afford the charges.

You do not have to seek legal advice but a Lasting Power of Attorney is a powerful and important legal document and you may wish to seek advice before proceeding.

Without a Power of Attorney in place, the Court of Protection makes decisions for people who are unable to do so for themselves. It can also appoint someone (called a deputy) to act for people who are unable to make their own decisions. A Deputy has to account to the Court at all times and any major decision needs the Court's permission. Every year the Deputy has to provide a 'Deputyship Report' to the Court.

Enduring Power of Attorney

Prior to 2007 it was possible to make an Enduring Power of Attorney. This was a simpler document. It is no longer possible to make an Enduring Power of Attorney but it is still valid if it was made prior to 2007.

Role of the Estate Manager

Your Estate Manager can signpost you to services (such as those listed below) to help you organise a power of attorney. Estate Managers cannot hold power of attorney for a resident, unless the resident is a member of their family, and Estate Managers cannot witness the application form.

If you have made an Enduring Power of Attorney or a Lasting Power of Attorney which has now been registered and your attorney is dealing with your affairs, please ensure that you let your Estate Manager know if you would like us to deal with your attorney

about your housing affairs. You will need to provide us with a copy of the relevant document.

Office of the Public Guardian – Tel 0300 456 0300

www.publicguardian.gov.uk

Alzheimer’s Society – Tel 020 7423 3500

www.alzheimers.org.uk

Citizens Advice Bureau – Tel 08444 111 444 (this number may not yet be available in all areas of the country)

<http://www.citizensadvice.org.uk/>