

POWERS OF ATTORNEY LEAFLET

You may have heard about Powers of Attorney but not actually know what they are.

Generally a Power of Attorney is a document that authorises a person (or more than one person) to assist you with:

1. the management of your property and finances and/or
2. to make health and welfare decisions on your behalf.

The person you appoint is called your Attorney.

Authorising someone to act as your Attorney does not mean that you cannot make your own decisions and handle your own affairs.

Use of Powers of Attorney.

Powers of Attorney can be used for a number of reasons, for example:

- To authorise someone to deal with your property and finances or to make specific decisions on your behalf for a set period of time or in relation to a specific matter
- To authorise someone to manage your property and financial affairs and/or to make specific decisions on your behalf because you no longer wish to make those decisions yourself
- To authorise someone to assist you with the managing of your property and financial affairs and/or to make specific decisions on your behalf if you were to become mentally incapable of doing so at a later date
- To sign papers for you

The type of Power of Attorney you will require will depend upon the type of authority you wish to give your Attorney(s).

Common Powers of Attorney

The most common Powers of Attorney are the General Power of Attorney and the Lasting Power of Attorney.

General Power of Attorney (under Section 10 of the Powers of Attorney Act 1971)

This can be used to give a general authority to your Attorney(s) so they can assist you straight away. There are restrictions to the extent of the authority you can give. Please read our General Power of Attorney factsheet for further details.

Lasting Power of Attorney

These are the only types of Power of Attorney that can give authority to an Attorney to assist you if you become mentally incapable of managing your property and financial affairs yourself or unable to make decisions in relation to health and welfare issues.

As part of our Powers of Attorney pack you will have received a Guidance Booklet relating to Lasting Powers of Attorney for property and financial affairs. Should you require further

information in relation to completing a Lasting Power of Attorney for health and welfare decisions please request a specific Guidance Booklet.

Enduring Powers of Attorney:

If you made a valid Enduring Power of Attorney prior to 1st October 2007, the document can still be used.

Enduring Powers of Attorney can no longer be made and the only type of Power of Attorney that will be able to be used if a person becomes mentally incapable of managing their affairs is a Lasting Power of Attorney.

Should you require assistance with the registration of an Enduring Power of Attorney or wish us to review the document for you please contact us for an estimate of our fees.

Other types of special Powers of Attorney (i.e. for Trustees/co-owners of property)

Should you require any other type of Power of Attorney, please let us know and we will provide you with further details.

Importance of Powers of Attorney

When deciding whether to make a Power of Attorney please consider the following:

Mental Capacity

If you become mentally incapable of managing your property and financial affairs at a later date, and you have decided not to make a Lasting Power of Attorney (and have not already completed a valid Enduring Power of Attorney), someone will need to apply to the Court of Protection to become a Deputy for you.

Application to become a Deputy

Time

The application to become a Deputy can take between 4 to 6 months (based on our experience) to complete due to the length of time needed to process such applications. The application fee the Court charges is substantially more than the charge they make for processing a Lasting Power of Attorney. This can hold up the management of your affairs and cause particular distress to your family at a difficult time.

Applications to Court

The Court of Protection when granting an Order to make someone a Deputy, will set out the authority that Deputy will have. If the Deputy wishes to act outside of that authority, they have to make a further application to the Court. Thus incurring further charges. If you make a Lasting Power of Attorney, you can decide upon the authority you wish to give to your Attorney so that future charges are minimised.

Health decisions

If you become mentally incapable of making health and welfare decisions for yourself these decisions are usually made for you by your next of kin.

Friends and relatives

If you do not have any next of kin someone will need to apply to the Court of Protection to become a health and welfare Deputy for you.

What if no one applies to become a Deputy for me?

If you have no immediate family or close friends to apply to the Court of Protection to become a Deputy for you Social Services may decide to apply to become a Deputy for you. If you wish to avoid this scenario, you should consider creating a Lasting Power of Attorney and appointing someone you trust to act as your Attorney.

Separation

If you become mentally incapable whilst still married, your estranged wife or husband is still classed as your next of kin. If you would like someone other than your next of kin to make health and welfare decisions on your behalf, you should consider creating a Lasting Power of Attorney in relation to health and welfare issues.

When to make a Lasting Power of Attorney

We cannot emphasise sufficiently the benefit to you and your family of dealing with these issues now rather than at a later time when you may become infirm or be in poor health.

You cannot create a Lasting Power of Attorney or any other type of Power of Attorney if you have already lost your mental capacity so it is important that this issue is addressed whilst you have capacity to do so.

What costs am I likely to incur?

We will advise you what our fees maybe for creating your Power of Attorney once you have established which type of Power of Attorney you would like to complete.

What you have to give us:

In order for us to be able to prepare your Power of Attorney, you must provide us with details of the nature and extent of the property which you own, together with your family circumstances and the personal details of the people you wish to appoint as your Attorneys.

Mental Capacity:

Your Power of Attorney cannot be valid unless you have the necessary mental capacity to make a Power of Attorney. We will not take any steps to obtain confirmation that you have the requisite mental capacity unless you ask me to do so and there will be an additional fee for this service. We will advise you if we are aware of any matter which gives rise to a significant risk that your capacity may be subject to challenge.

In order to avoid any risk of a challenge to your Power of Attorney on the basis of lack of capacity, we will recommend that, if necessary, you authorise us to contact your doctor in order for us to obtain information of your capacity to make a Power of Attorney from him

or her and that he or she be asked to witness your Power of Attorney if appropriate. There will be an additional fee for this service.

Involving a doctor usually lengthens the time the matter takes to complete.

Drafting the Power of Attorney:

When we have prepared your Power of Attorney in accordance with your instructions, we will send a draft to you for your approval. It is important that you read all its provisions carefully so as to make sure that you understand its contents and that it complies with your wishes.

The purpose of the draft Power of Attorney is for us to check that we have carried out your instructions. The draft Power of Attorney is not a final document and we require your specific approval to its terms or details and any amendments before we prepare the final Power of Attorney for you to sign (execute).

If we do not have your instructions upon the draft Power of Attorney within 28 days of it being sent to you we shall treat our instructions as having been terminated by you and we will send you our invoice for the work carried out.

Execution of the Power of Attorney:

In order to remove any risk that your Power of Attorney is not properly signed (executed), we recommend that you sign your Power of Attorney at our Office. There will be no additional fee for supervising the execution of your Power of Attorney.

Change of circumstances:

You should realise that, if, after executing your Power of Attorney, one or more of your Attorneys becomes mentally incapable of managing your financial affairs and property or they die, you may need to complete a new Power of Attorney. We do not review the terms of your Power of Attorney after it has been executed unless you ask us to do so. If you ask us to do so, there will be an additional fee for this service.

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