

# LASTING POWERS OF ATTORNEY

## Dealing with matters on your behalf

There are many occasions when a person might wish to give someone the ability to deal with matters on your behalf. For example, you may be going away and have legal matters to be dealt with in your absence, or, perhaps, you have to manage a property at a distance. This can be done by granting a General Power of Attorney.

Of even more use, however, can be a Lasting Power of Attorney. Unlike the General Power, a Lasting Power enables your Attorney to manage your affairs even if you become mentally incapable.

Either General or Lasting Power can be limited in effect, (for example to deal only with the sale of a house), or can extend to dealing with all your financial affairs. It is also possible to make a separate Lasting Power to cover your personal welfare as well.

## Court of Protection

Powers of Attorney are important because, contrary to general belief, no one has automatic legal authority to deal with financial matters on behalf of another person, not even the next of kin. If you become incapable of dealing with your financial affairs for yourself and have no Power of Attorney in place, it may well be necessary to obtain an Order from the Court of Protection (now the Public Guardianship Office) which can be time consuming, complicated and expensive.

## Lasting Powers

These days, the most common form of Power of Attorney created is called a Lasting Power which is the successor to the Enduring Power of Attorney. Such a power can incorporate all the provisions of a General Power with all the added advantage that it can continue in effect even if you become mentally incapable. Typically, this is the very time when a Power of Attorney is needed the most. If you have a General Power of Attorney in place, it may well be worth reviewing matters and completing a new Lasting Power.

The contents of a Lasting Power of Attorney can be relatively simple but the document does need to be drawn up and completed strictly in accordance with prescribed rules. Legal assistance in completing such a Power is highly recommended.

## Joint and Several Attorneys

You are able to appoint a single Attorney, or two or more. If you appoint more than one Attorney, you can decide whether they may act jointly (i.e. all must sign documents on your behalf) or jointly and severally (i.e. all or any one can sign

for you). We would usually recommend that Attorneys are appointed jointly and severally as a joint Power cannot operate when one Attorney is not available to sign, it is also possible to appoint a successor if, for whatever reason, one of your attorneys is no longer able to act. Your individual circumstances, however, take precedence and we will discuss this issue fully with you when taking instructions.

## Registration with the Office of the Public Guardian

To come into operation a Lasting Power of Attorney must be registered with the Public Guardian. The Public Guardian acts as a registration and complaints authority, and offers you and your family protection against the misuse of a Power. However, the Public Guardian will not actively interfere in your affairs. If there is no Lasting Power of Attorney in place the Court of Protection may order the appointment of a Deputy (see our leaflet 'Deputyship and Court of Protection').

## Activating a Lasting Power of Attorney

We recommend that all clients considering having in place a Lasting Power of Attorney ready to spring into play when required. We see this as a sensible precautionary measure. Powers can be immediately effective if required or can be limited so that they can only come into operation with the onset of mental incapacity or physical disability. We will discuss this issue with you when taking your instructions.

## Lifestyle

It is important to understand that a Lasting Power of Attorney for financial affairs only covers business and financial matters and does not extend to what might be called 'lifestyle issues' such as where you live or the medical treatment you receive. Such decisions remain with you, your next of kin, or in the last resort, the Court. However, with regard to medical treatment and other personal matters you may care to consider executing a Lasting Power of Attorney dealing with personal welfare matters and we would be happy to discuss the options.

## When should a Lasting Power of Attorney be entered into?

The simple answer is - as soon as possible. You do not need to be elderly to require a Lasting Power of Attorney - sadly, ill health or accident can visit anyone at any age. It is never too soon to speak to Berry & Berry about this.



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