

## WHAT IS A POWER OF ATTORNEY

A Power of Attorney is used when one person (the Donor) wishes to allow somebody else (the Attorney) to have control over their financial affairs. By executing a particular document the Donor gives the Attorney the right to carry out certain functions for example, receive income, pay bills, sign documents and make gifts on behalf of the Donor.

### WHEN CAN IT BE USED

Enduring Powers of Attorney can be used at the request of the Donor whilst the Donor still has mental capacity and also after a Donor has lost mental capacity but provided the EPA has first been registered at the Office of the Public Guardian.

The Donor may ask the Attorney to deal with their financial affairs for many reasons. For example, the Donor may be going abroad at a time when certain business needs to be dealt with or they may have to spend some time in hospital or may be physically unable to get to the post office or Bank for their pension or to the shops. In these cases we will ask for written authority or for the Donor to advise us in person that they wish to activate the use of the EPA and we will then provide some certified copies of the EPA for use by the Attorney.

When the Donor is or is becoming mentally incapable the EPA must be registered with the Office of the Public Guardian. Once registered certified copies will be provided that can be used by the Attorney.

### REGISTRATION

If the time comes that the EPA must be registered at least one attorney must go through the procedure laid down by the Mental Capacity Act 2005.

This requires the attorney to serve a notice on certain members of the Donor's family and also on the Donor stating that they will be applying for registration.

The persons who are notified then have a short period to send a notice to the Office of the Public Guardian if they object to the Registration. There are very limited reasons that an objection can be raised.

Once the notices have been served the original EPA is sent to the Office of the Public Guardian. Provided no objections are raised the OPG will stamp the EPA as registered and then return the registered document for use by the Attorney.

## WHAT POWERS DOES THE ATTORNEY HAVE

The Attorney can deal with all the Donor's financial affairs. This will include managing their Bank or Building Society accounts or investments – drawing money paying bills setting up Direct Debits, closing opening accounts – in fact anything any individual can do themselves.

It will also allow them to complete forms to apply for benefits and deal with the utility companies. The attorney will also be able to sell the Donor's house or other property.

The Attorney must act in the Donor's best interest at all times. Where the Donor is able to make a decision for themselves the Attorney must allow them to do so. If the decision could be made with help then the Attorney must provide that help. But if the Donor cannot make the decision the Attorney can make it for them. These are the principles set out in the Mental Capacity Act 2005 and the Code of Practice to the Mental Capacity Act. We can provide an Attorney with advice about the Mental Capacity Act and its Code of Practice.

## CAN I GRANT AN ENDURING POWER OF ATTORNEY MYSELF

No. When the Mental Capacity Act came into force no new EPA's were allowed to be created. Those people who had signed an EPA before then can still use the EPA.

The only alternative is for someone to sign a Lasting Power of Attorney. If you would like information regarding this please ask for our information leaflet.

If you have any questions please contact us:

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