

Powers of Attorney

There may come a time when you are incapable of managing your affairs, whether as a result of physical and/or mental incapacity or because you are facing an extended spell in hospital.

There are a number of different types of Powers of Attorney:

1. A **General Power of Attorney** is suitable for a short period of time, for example, to use if you are abroad and would like someone to look after your affairs in your absence. This can only be used whilst the Donor has capacity.
2. There are two types of **Lasting Powers of Attorney**:
 - **Property and Financial Affairs** which allows your Attorney to deal with your property and finances according to your instructions.
 - **Personal Welfare** allows your Attorney to make personal welfare and healthcare decisions for you but only when you lack mental capacity to do so yourself. You may also, if you wish, extend this Power to giving or refusing consent to life-sustaining treatment.
3. Existing **Enduring Powers of Attorney** (executed prior to October 2007) remain valid and must be registered only when the Attorney believes the Donor is becoming mentally incapable of handling their affairs.

The Power of Attorney means there is someone to take over if and when you cannot manage your affairs yourself. We recommend that everyone should consider whether a Power of Attorney would be beneficial in their own circumstances, as no one knows when incapacity as a result of illness or accident may occur.

Your Attorney should be someone that you trust implicitly as you are giving them control over your affairs. You may consider your spouse and/or children, a close friend or relative to act as Attorney for you. If more than one Attorney is appointed, they may act jointly or jointly and severally. We recommend the latter as it allows more flexibility, particularly if your Attorneys live in different parts of the country. In the unfortunate circumstance that one of your Attorneys should predecease you, the joint and several options means that the Power does not then become invalid by reason of an Attorney's death.

The Lasting Power of Attorney must be signed by you and your Attorney and also by a suitable person as certificate provider who will certify that you have not been unduly pressured into making the Power.

Before it can be used, it needs to be registered with the Office of the Public Guardian. We recommend that registration takes place immediately the Power has been signed so

that the Lasting Power of Attorney can be used as soon as it is needed. We should point out that there are often delays in the registration process with the Office of the Public Guardian. Prior to registration it will be necessary to nominate up to five people to be notified of the registration process. Alternatively a second certificate provider would need to sign the document.

When there is no Power of Attorney in existence and the capacity to make a financial decision is lost, due to infirmity or mental incapacity, an application needs to be made to the Court of Protection to appoint a Deputy who would act on your behalf. This is both time-consuming and costly and is stressful for family members. Making a Power of Attorney now to ensure that your affairs can be dealt with quickly, should you be unfortunate enough to lose the ability to handle your affairs, is a good move.

If you would like to discuss the options available regarding the arrangements you can make to allow your affairs to be managed in the event of your incapacity, please contact our Wills & Probate Department at Alison Fielden & Co.

Alison Fielden & Co. The Gatehouse Dollar Street Cirencester GL7 2AN Tel: (01285) 653261
Monday – Friday 8.30am-5pm **Saturdays** 8.30am-12.30pm