

POWERS OF ATTORNEY – WHAT ARE MY OPTIONS?

POWERS OF ATTORNEY are documents where the person making the document (the **Donor**) authorises someone else (the **Attorney**) to carry out transactions on his/her behalf and on his/her instructions. There are many different Powers of Attorney but for the purposes of this leaflet we have put them into three categories:

A. Powers of Attorney which can be used even when the Donor can no longer give instructions because they do not have 'mental capacity' e.g. they are unconscious, have had a stroke or have dementia. The Powers of Attorney which would be appropriate for these situations would be:

- A.1 Enduring Power of Attorney if made before 1st October 2007
- A.2 Lasting Power of Attorney (Property and Affairs) if made on or after 1st October 2007

B. Powers of Attorney which can be used only when Donor is capable of giving instructions (i.e. they cannot be used if Donor does not have mental capacity). The Powers of Attorney which would be appropriate for these situations would be:

- B.1 General Power of Attorney
- B.2 Specific Power of Attorney
- B.3 Trustee Power of Attorney

C. Powers of Attorney or Advance Decisions which can only be used in relation to Personal Welfare and then only when the Donor has lost his/her mental capacity and cannot speak for themselves. They are:

- C.1 Advance Decisions made before or after 1st October 2007
- C.2 Lasting Powers of Attorney (Personal Welfare) made on or after 1st October 2007.

CATEGORY A

Enduring Powers of Attorney

From 1st October 2007 it is no longer possible to make an Enduring Power of Attorney. You may be familiar with this type of document as it has been very useful and become very popular since 1985. EPAs have been available for anyone over 18, although they are particularly important for the vulnerable and elderly because they continue to be effective even if the person making the document (the Donor) no longer has the mental ability to give instructions e.g. if they have had an accident, a stroke or are suffering from a degenerative illness such as dementia. In those circumstances it enables the Donor's Attorney (usually a member of their family, a close friend or their solicitor) to

manage their affairs (i.e. their money and property) for them provided they do so in the Donor's best interests.

EPAs which were in existence on 1st October 2007 can continue to be used after that date and only need to be registered with the Office of the Public Guardian if the Donor is unable to manage his or her own affairs. A fee is then paid to the OPG.

Lasting Powers of Attorney (Property and Financial Affairs)

Since 1st October 2007 the government has introduced a new form of Power of Attorney for those who are vulnerable and may lose their mental capacity. A Lasting Power of Attorney is now the appropriate Power of Attorney to use in these cases. The document can be obtained from the Office of the Public Guardian or downloaded from their website by going to: <http://www.direct.gov.uk/en/Governmentcitizensandrights/Mentalcapacityandthelaw/index.htm>

There are two types of LPAs:

1. for the management of a person's property and affairs, and
2. for decisions in relation to their personal welfare (once they are no longer able to make these decisions for themselves). See *Category C*.

CATEGORY B

General Power of Attorney

This document can be used at any time by anyone over 18 who wishes to authorise someone else to sign for him/her and carry out transactions on his or her behalf. It is called a "general" Power of Attorney because it enables the Attorney to do most things the Donor authorises in relation to property and affairs. It can be used immediately it is signed. It does not have to be registered with the OPG or other government body and there is no registration fee. However, if the Donor loses his/her mental capacity the document can no longer be used.

A General Power of Attorney may be made by someone who also makes an LPA as it can be used immediately while the LPA is being registered.

Specific Power of Attorney/Trustee Power of Attorney

These are used for specific reasons or where the Donor is himself/herself a trustee. We would advise you to obtain specific advice on these if you feel they would be appropriate for you.

CATEGORY C

Advance Decisions

These documents allow us to have a say in the quality of our increased life span. We expect to be offered options and choices at all stages of life and therefore 'end-of-life' issues are no different from those arising at any other time. An Advance Decision is a document in which a person, while still mentally competent, requests and directs that certain measures should be adopted if and when he/she becomes incapable of taking responsibility for his/her own health care. The Donor can say whether he/she wants life sustaining treatment. It does not have to be registered with OPG and no fee is payable.

Lasting Powers of Attorney (Health and Welfare)

This form of document was introduced by the government and can be used from 1st October 2007. It allows a person to appoint an Attorney to make decisions for the Donor in relation to health and welfare matters only after the Donor has lost mental capacity. It also allows the Donor to give the Attorney the power to make decisions about life-sustaining treatment. This document must be registered with the Office of the Public Guardian and their fee paid before it can be used.

HOW WE CAN HELP YOU

As with any Power of Attorney it is an important document and you should take care who you appoint, as they should be:

- trustworthy
- have your best interests at heart
- have a good understanding of your needs and values, and
- have appropriate skills to make the proposed decisions.

At Stone Rowe Brewer we will be pleased to advise you on making an appropriate Power of Attorney and prepare the document for you if you wish.

Please also see our leaflet: Lasting Powers of Attorney

Stone Rowe Brewer LLP
Stone House
12-13 Church Street
Twickenham
Middlesex TW1 3NJ
United Kingdom

Telephone: +44 (0)20 8891 6141
Fax: +44 (0)20 8744 1143
Email: info@srb.co.uk
www.srb.co.uk
DX200006 Twickenham

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