

TAIT & MACKENZIE

SOLICITORS

Why grant a Power of Attorney?

Powers of Attorney are a useful way to provide help to a person who has lost “legal capacity” to look after their own affairs and make decisions for themselves. A Power of Attorney can be granted to say in anticipation of future incapacity who your Attorney should be and what he or she will be able to do. There is a common misconception that spouses can automatically deal with the other’s affairs but that is not the case. Granting a Power of Attorney is a bit like taking out an insurance policy. You may never need it but if you do the benefits to you and your family are significant. Granting a Power of Attorney keeps you in control – you choose the Attorneys you trust and the powers they are to have.

Powers of Attorney are sometime thought of as a concern for the elderly or unwell. Accident or illness can sadly strike any of us at any time and therefore it is equally important for younger clients to think about putting a Power of Attorney in place. Often families come to us with a concern about a family member, perhaps prompted by a recent diagnosis, and ask whether a Power of Attorney can be put in place. For others, they may have had experience of caring for a relative who did not have a Power of Attorney and they have seen first hand the difficulties which can arise.

If incapacity strikes and no Power of Attorney is in place then families can be faced with the expensive, time-consuming and complicated prospect of applying for a Guardianship Order through the courts. This can cause delay and distress at an already difficult time. The common example is where a person has been in hospital and is moving to residential care. Where the family do not have a Power of Attorney then the Social Work Department of the Local Authority have power to move an incapable adult into care without the consent of the family.

The Power of Attorney

There are two forms of Powers of Attorney – Continuing and Welfare. The “Continuing” Power of Attorney gives your Attorney legal and financial powers to deal with your property and money. Welfare Powers of Attorney cover your day to day personal life such as where you stay, what care you receive and your diet, how you dress, etc. Most clients choose to have a combined Continuing and Welfare Power of Attorney.

The Continuing powers can normally be used once the Power of Attorney is registered with the Office of the Public Guardian. This is even while the granter of the Power of Attorney has capacity, so long as they consent to the powers being used. This can be helpful where, for example a person has an extended stay in hospital and cannot see to their affairs themselves.

Welfare powers can only ever be used if the granter has lost capacity. If there is any doubt about capacity then the opinion of medical practitioners would need to be obtained.

Choosing your Attorneys

The choice of Attorney is very important and you should only choose someone who you trust completely. Being an Attorney is an important role and you should think about who would be best suited. Most people choose relatives, particularly of the younger generation, but there is nothing to stop you appointing a friend or other person if they have the necessary skills. It is always best to discuss your plans with your chosen Attorney before appointing them to check that they are happy to act.

We usually recommend the appointment of 2 or 3 Attorneys so that there is always someone available. They can be appointed on a joint basis, a substitute basis or individually. It is important for us to understand your choice of Attorneys to advise you on what may be the most practical option for you.

An Attorney can resign and a granter can also revoke a Power of Attorney. This, however is rare in practice.

Duties of your Attorney

Your Attorneys will have the powers that you list in the Power of Attorney. The Attorney can only do something if they have the necessary power. There is a Code of Practice for Attorneys issued by the Office of the Public Guardian which should guide all Attorneys in their acting. Your Attorney should always act in your best interests and should take account of your past and present wishes. They should only do something if it is of benefit to you and should use the minimum intervention in your affairs. There is also a duty for your Attorney to consult with others, for example carers or close relatives.

Most Attorneys act sensibly and with due care and skill in carrying out their duties. On the very rare occasion that an Attorney breaches their duties then various bodies such as the Office of the Public Guardian, the Local Authority, Mental Welfare Commission and the police all have powers to take action.

How do I grant a Power of Attorney?

A Power of Attorney is a relatively straightforward process. At Tait & Mackenzie we can meet with you (either in our office, at your home, hospital or Care home where necessary) and discuss your requirements. We would then prepare the Power of Attorney document for you to approve and would write to your proposed Attorneys to ensure they are happy to accept the role. A second short meeting would then be needed for you to sign the Power of Attorney. We then send the Power of Attorney to the Office of the Public Guardian for registration. The registration process is currently taking around two months but where there is an urgent need for a Power of Attorney to be in place we can normally get the registered Power of Attorney within a week. Once registered the Power of Attorney is then ready for use and we can provide certified copies to you and your Attorneys for exhibiting to the bank, hospital, etc.

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