



LASTING POWERS OF ATTORNEY

The new regime from 1st October 2007

On 1st October 2007 the law relating to Powers of Attorney changed, under the Mental Capacity Act 2005, although existing Enduring Powers of Attorney will continue to be valid. The new law better meets the needs of people who have, or may have in the future, impaired capacity, such as those with Alzheimer's or dementia and enables people to decide on future medical and personal care. Now provision can be made for someone to take on not only responsibility for financial issues but also health and welfare issues and particularly medical treatment.

In the same way that conscientious people made Wills and Enduring Powers of Attorney in the past, now they will in addition be able to appoint a trusted person to take decisions about their personal welfare. This will help in the situation where there are conflicting views within the family, or indifference, and more importantly it will relieve those close to the donor of responsibility for trying to guess what the person would have wanted. The attorney will be the point of reference for doctors advising on treatment.

There are two new Lasting Powers of Attorney –

Property and Affairs Lasting Powers of Attorney

A Property and Affairs Lasting Power of Attorney enables a person, while still capable of making decisions, to appoint an attorney to deal with their property and financial affairs, so it replaces Enduring Powers of Attorney. Once registered it can be used before the donor loses mental capacity.

Personal Welfare Lasting Powers of Attorney

A Personal Welfare Lasting Power of Attorney enables a person, while still capable of making decisions, to set out how they want to be cared for if and when they lose their mental capacity. It covers medical treatment as well.

The LPA has to be registered with the Public Guardian before it can be used, even if the donor still has mental capacity. The procedure for making the Power is lengthier than the old system of Enduring Powers but this and the need to register it before it can be used, involving notification of to up to five persons chosen by the donor, reduce the risk of the attorney abusing his position. When the Powers are created an independent person has to certify that the person making it is doing so of his own free will and that he understands what he is doing. In the Personal Welfare LPA a further check on abuse is that when the donor has made a decision about life-sustaining treatment this has to be witnessed.

There is no doubt that the formalities, and inevitably the cost, of making Lasting Powers of Attorney are greater than the old system but the wider powers and new safeguards are well worth it.

We recommend that all our clients consider making Lasting Powers of Attorney.

To discuss this and obtain more information CONTACT AMANDA MAY at
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