



Renaissance Legal

Powers of Attorney

What does Power of Attorney mean?

By a Power of Attorney you can delegate administration of your affairs to someone who is competent to handle them for you. You may just be out of the country for several months or it could be that you are unwell and you need someone to help you during this period.

Before we go any further, it might be helpful to understand some terminology. The person creating the Power of Attorney is called the Donor. The person acting on behalf of the Donor under the Power of Attorney is called the Attorney.

A Power of Attorney can be given to a close friend, relative, a professional advisor or a mixture of these. It gives the Attorney authority to make decisions and to act on behalf of the Donor, as if the Donor is acting. It is like stepping into the Donor's shoes and doing everything that the Donor can do for themselves.

It can provide great peace of mind to know that your affairs will be managed by someone you have chosen and a Power of Attorney allows you to make that decision.

In England & Wales, there are two types of Power of Attorney you can make, a General Power of Attorney and a Lasting Power of Attorney. Lasting Powers of Attorney were introduced in October 2007 as a replacement for Enduring Powers of Attorney.

General Power of Attorney

A General Power of Attorney is usually a basic authority given for a specific period of time or to do specific jobs. The need to create a General Power of Attorney might arise where you are going abroad or are too busy to deal with a particular financial transaction.

A General Power of Attorney will usually end either at a specified time or on the request of the Donor. It will always automatically come to an end if the Donor loses mental capacity.

The Attorney may be authorised to act in relation to all of the Donor's property and financial affairs, or just specific ones. This could include buying or selling property or shares, signing cheques and collecting pensions. It does not enable the Attorney to exercise functions which the Donor has as a trustee or as the executor of someone's estate, unless this is specifically stated.

The main benefit of creating a General Power of Attorney is that it does not have to be registered with an official court or body for the Attorney to act under it. This makes it quick, easy and relatively inexpensive to complete.

We generally find that this is perfect for small and quick transactions, for example, where someone is buying a house and will be out of the country for a large amount of time during the purchase period and they need someone to sign papers whilst they are out of the country.

Lasting Power of Attorney

Lasting Powers of Attorney are rather more complicated to create and deal with than General Powers of Attorney. Having said that, Lasting Powers of Attorney are far more useful than General Powers of Attorney. This is because Lasting Powers of Attorney remain valid if the Donor becomes mentally incapable of handling his or her affairs – hence the name.

There are two types of Lasting Powers of Attorney that can be created:

1. The first deals with Property and Financial Affairs. This gives the Attorney authority to deal with the home and finances of the Donor; and
2. The second deals with Health and Welfare. This gives the Attorney authority to take decisions on matters such as where the Donor should live and the care the Donor should receive. This could extend to giving or refusing consent to life sustaining treatment.

One of the main differences between General Powers of Attorney and Lasting Powers of Attorney is the procedures and formalities that have to be followed before the Attorney can act.

The Lasting Power of Attorney has to be signed by the Donor and the Attorney and a certificate in it has to be completed by someone confirming that the Donor understands what he or she is signing and that there is no reason why the Lasting Power of Attorney should not be created. It then has to be registered with the Office of the Public Guardian.

An Attorney under a General Power of Attorney can act from the time it is created unless it states otherwise.

The Property and Financial Affairs Lasting Power of Attorney can be used when the Donor has capacity to act, as well as when the Donor lacks mental capacity. The Health and Welfare Lasting Power of Attorney can only be used when the Donor lacks mental capacity.

A Lasting Power of Attorney can be created but not registered with the Office of the Public Guardian until the Attorney needs to act. This may be suitable for people who wish to stagger the costs of creating a Lasting Power of Attorney.

Lasting Powers of Attorney are now becoming more common. In the first three months of 2010, the Office of the Public Guardian received nearly 55,000 applications for registration – double the amount received in the same period in 2009.

Please see our **Lasting Powers of Attorney** factsheet for more information.

Choosing your Attorney

Whichever document you chose to create you should take care who you appoint as your Attorney. The Attorney should be trustworthy and have appropriate skills to make decisions on your behalf.

If you appoint more than one Attorney, you can appoint them to always act together or you can appoint them to act together or separately. If you appoint them to act together and separately it means that they can decide to act together on some things and separately on others.

You may even decide to appoint the Attorneys to act together on certain matters and together or separately for others. This should, however, only be done with considered advice, as it may cause problems for the Attorneys.

Existing Enduring Powers of Attorney

Any Enduring Power of Attorney which was correctly made before 1st October 2007 can continue to be used.

Enduring Powers of Attorney could only be given in respect of Property and Financial Affairs so if you wish to give authority over your Health or Welfare, you will need to make a Health and Welfare Lasting Power of Attorney.

Attorneys under an Enduring Power of Attorney need to remember the obligation to register the Enduring Power of Attorney with the Office of the Public Guardian if there is reason to believe that the Donor has become or is becoming mentally incapable of managing his or her financial affairs.

What happens if you have not made a General Power of Attorney, Lasting Power of Attorney or Enduring Power of Attorney?

If there comes a time when you lack capacity to make decisions for yourself, then it may be necessary for an application to be made to the Court of Protection for an appropriate order to make decisions for you. Even your spouse, civil partner and children would be powerless to act on your behalf without a court order. This can be costly and time consuming.

Please see our **Court of Protection** factsheet for more information.

How we can help

We will discuss with you the best type of Power of Attorney to meet your needs. We will then create the document for you, make sure it is completed and if necessary, deal with registration. We can also act as an Attorney for you if you would like us to.

If you would like to discuss this further then please call us on 0845 505 60 50 or email us at info@renaissancelegal.co.uk