

## Attorney

This Information Sheet is intended only as a basic guide and not as an authoritative or legal document. Clients are advised to consult an appropriate financial or legal advisor for specific advice relevant to their wishes and circumstances or in respect of any queries.

A Power of Attorney is basically a legal procedure that allows a person of sound mind over the age of 18 years (the donor) to select and appoint another person(s) (the attorney) to look after all or specified affairs of the donor either at a time/date specified by the donor or if the donor becomes unable to look after their own affairs. The person selected (the attorney) can be given wide and powerful powers including financial powers to legally act on behalf of the donor so it is vitally important that the donor places a high level of integrity, honesty and reliability on the attorney(s) selected. It may be generally considered that choosing two unrelated trusted attorneys reduces the opportunities and risk of any wrongdoing but may prove more challenging for the attorneys to liaise and agree on the best representations of your interests. If a doubt exists in regard to the mental capacity of a donor to grant a power, a report from a qualified medical practitioner may be required or appropriate. Powers of Attorney should be considered as a vital part of financial planning and/or personal welfare and wishes. In England there exist different types of Power of Attorney (different rules may apply for Scotland, Wales and Ireland)

**General Power of Attorney. (GP)** In simple terms, this is a basic power to authorise your attorney(s) to act for you and help with tasks the donor specifies. The donor also specifies in their deed the date when such a general power is granted, which can be immediate, and can specify the tasks or areas that they wish to grant to their attorney(s), such as restricting the power to only handling a specified bank account for example, or grant a full power to permit their attorney to act for the donor on any matter permitted within legislation. There are some exceptions within current legislation that the attorney cannot act for the donor, such as for example, signing the donor's Will. The significant consideration for elderly clients with a General Power is that the power runs out if or when the donor becomes unable to manage their own affairs.

**Lasting Power of Attorney. (LPA) (from 1 October 2007)** This new, more complex, power replaces the old Enduring Power of Attorney and comes in two types, the first covering as before property and money, the second and new, decisions over the donor's health and welfare. This LPA is drawn up whilst the donor is of sound mind and may be activated by the Attorney if or when the donor becomes unable to look after their affairs. This new power will be a comfort to anyone concerned about entrusting important decisions about care and treatment to the right person, creating a framework for the donor to discuss priorities and preferences with the attorney in good time. Further, because registration has to happen at the start of the process, whilst the donor is still able to make decisions, it is hoped that it will encourage donor and attorney to work together for longer, in partnership. In addition, the new LPA cannot be registered without a signed certificate from a reputable person (categories to be announced) confirming that the donor is of sound mind, added layers of security for the protection of the donor against unscrupulous manipulation of the system to steal money or property. This new power will involve a new up front fee, increased over the old rate, to the Public Guardianship Office on initial registration. Under this power the donor, not the PGO, can choose up to five, not three, persons/next of kin for the PGO to advise of the application for registration.

**General.** Granting a Power of Attorney is such a significant step that many people prefer to seek the assistance of a solicitor and whilst this can be an expensive route, average charges currently between £100 and £450.00, it is by and large recommended to ensure that the donor's interest are appropriately considered and catered for. However, you can if you wish set one up on your own, (not recommended) with appropriate forms available at some stationers such as W H Smith or preferably, obtain advice and the appropriate forms from the Public Guardianship Office on 0845 330 2900, see [www.guardianship.gov.uk](http://www.guardianship.gov.uk) or e-mail [custserv@guardianship.gsi.gov.uk](mailto:custserv@guardianship.gsi.gov.uk). You should be aware however that for home made Powers of Attorney there is a possibility that the form of words you use will be inadequate for the purpose for which it is intended. All Powers of Attorney authorisation's cease from the date of a donor's death.

If you decide you do not wish to make an EPA or LPA, and you lose mental capacity to make certain decisions in the future, the Court of Protection can appoint a trusted deputy to make those decisions for you ongoing or long term. The deputy could be a friend, relative or a professional. If not ongoing or long term, the Court may make a single order allowing someone who is approved to make a particular decision on your behalf.

It is important that a valid will has been made and that both donor and attorney should bear in mind the implications of any UK tax laws on income, capital gains and inheritance tax, the latter levied at 40% on any amount in an estate over £312,000 (£624,000 for those living couples in a marriage or Civil Partnerships and retrospectively under legislation introduced for Widows and Widowers - subject to confirmation/eligibility) It may also be prudent to bear in mind that under existing legislation, in certain circumstances property can be treated as an asset and a charge placed upon it and/or sold in respect of the payment of care home fees where application is made for state assistance in the payment of those fees.