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PRIVATE CLIENT DEPARTMENT

LASTING POWER OF ATTORNEY FACT SHEET

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1. Introduction

The object of this document is to help you understand what Lasting Powers of Attorney are and where they may be of use to you

2. Types of Power of Attorney

Powers of Attorney permit someone (the Donor) to delegate a personal power to someone else (the Attorney). These can be for short-term general use, for instance to allow someone to sign documents for you when you will be unavailable or in a different part of the Country/World, and they can be more specific.

This fact sheet covers Lasting Powers of Attorney which are documents that can last for the life of the Donor and intended primarily for the assistance of those who are or might be unable to deal with their own affairs through mental or physical disability.

Before 1st October 2007, it was possible to create an Enduring Power of Attorney ("EPA") and where these were created before that date they continue to be valid.

Since 1st October 2007, only Lasting Powers of Attorney may be created and these are of two different types:

- Lasting Power of Attorney for Property and Financial Affairs
- Lasting Power of Attorney for Health and Welfare

3. Enduring Power of Attorney

These documents must have been created before 1st October 2007 in order to be valid.

Once created and signed by the Donor, the Enduring Power of Attorney comes into effect immediately and the Attorney may act for the Donor (unless any contra intention appears in the document). If the Donor loses capacity, the Enduring Power of Attorney must be registered with the Office of the Public Guardian in order to be used further.

We can assist with registration and advice on these documents but cannot create new EPAs.

4. Lasting Powers of Attorney

These are the current form of Power of Attorney for Donors which last until death or earlier cancellation.

The Lasting Power of Attorney for Property and Financial Affairs enables the Donor to appoint attorney(s) to assist them during their lifetime in dealing with their money and property.

The Lasting Power of Attorney for Health and Welfare enables the Donor to appoint attorney(s) to assist them in making decisions about their medical care, their community care and where they live.

Attorneys can be appointed in the following ways:

- Singly - in which case one attorney commands all the authority of the Donor
- Multiple Attorneys can be appointed either
 - Jointly (in which case all Attorneys must act together in all decisions); or
 - Jointly and severally (in which case the Attorneys can either act together or on their own).

It is also possible (and often advisable) to appoint replacement attorneys in case your first attorneys are unable to act.

The Lasting Powers of Attorney (“LPA”) must be registered with the Office of the Public Guardian in order to be effective as, prior to registration, the documents do not confer any power on the Attorneys. LPA for Property and Finances may be used by the Attorneys as soon as it is registered and this is often helpful for friends or relatives who are unable to deal with some of their own financial affairs, because they are housebound or find it too difficult to handle.

The LPA for Health and Welfare does not allow the Attorney to make decisions for the Donor unless they are incapable of making the decision themselves. In both instances however, the Attorneys are under Statutory duties to act in the best interests of the Donor.

LPAs may contain restrictions and guidance for Attorneys governing what they may, or may not, do with the Donor’s estate or care but it is always vital that the Donor trusts their Attorneys. We generally advise that a Donor who would not trust their Attorney with complete and unfettered access to their bank accounts has selected the wrong Attorney.

5. The duties of an Attorney

Being an Attorney has considerable duties associated with it. Attorneys are under a duty to always act in the best interests of the Donor. They must comply with the principles of the Mental Capacity Act which are based around the assumption that the Donor is able to make their own decisions unless established otherwise. The Attorney is also required to try to help the Donor to make as many of their own decisions as possible and not to discount the Donor’s wishes for simply being unwise. The Attorneys are required to act in the best interests of the Donor at all times and try to act in a way that is least restrictive.

Attorneys are held accountable for their actions and can be the subject to criminal or civil proceedings for their failure to comply with their duties.

Whilst it may be an honour to be appointed as someone’s attorney, there are responsibilities that accompany it and Donors are always encouraged to consider their choice of Attorneys very carefully.

6. Registration

We generally prepare all of the registration documents and complete the registration process when preparing LPAs. Whilst it is not necessary to register the document at the time of creation, and there may be valid reasons for not registering, we find it is generally better for registration to be undertaken without delay.

The LPA may not be changed after it has been created and therefore registration at the time of completion usually ensures that the details are fresh. A delay which results in changed names of attorneys may require further explanation at the time of registration and delay the process.

Registration can take 2-3 months depending on the workload of the Office of the Public Guardian. There are statutory periods which must elapse before registration can be completed and this all adds to the delay. If there are any errors in the documents which are identified at the time of registration this can delay the process or cause registration to fail. It is often better to complete this when any errors can be rectified by the Donor. If registration is left until after the Donor has lost capacity, errors cannot be corrected.

7. Without a Power of Attorney

Where someone has not created a Lasting Power of Attorney and subsequently loses capacity to deal with their own affairs, an application to the Court of Protection to appoint a Deputy is typically necessary.

A Deputy takes a similar role to an Attorney but is appointed by the Court to look after the Donor's affairs. Whilst the result is similar, the process usually takes much longer, may end up with a Deputy who the Donor would not have chosen themselves and costs significantly more. There are costs in making the application to the Court and ongoing costs of an insurance bond for the Deputy together with the Court's costs for ongoing supervision of the deputy.

We can advise on both Lasting Powers of Attorney and Deputyship applications but would always advise people to consider making Lasting Powers of Attorney whilst they have capacity to avoid their families the further costs and difficulty in applying to the Court.