WILLS, TRUST'S & PROBATE

Taylor Bracewell

Your solicitors | Your success

A Guide to the different types of Power of Attorney

A Power of Attorney is a document which enables someone else to act on your behalf and make decisions for you if you are unable to do so yourself. This may be because you are mentally or physically incapable or acting.

If someone you love has lost mental capacity you may want to step in to assist them in running their affairs. If they have not made a Power of Attorney giving you this authority then you would have to consider making an application to the Court of Protection.

It is essential to plan for your future and put all necessary documentation in place to ensure, not only that you are protected, but also that the situation is made as easy as possible for everyone around you. Without any legal authority, it is extremely difficult for anyone to look after your affairs, even if that is what you want and they are doing what is in your best interests.

Different Types Of Power of Attorney

General Power of Attorney

A General Power of Attorney allows you to appoint someone else to act on your behalf usually in relation to a specific event or for a specific period, for example, to deal with one particular bank account whilst you are on holiday.

A General Power of Attorney is very quick and easy to set up and does not need to be formally registered anywhere in order to be valid.

However, despite their simplicity, it is essential that professional advice is taken on entering into a General Power of Attorney, as you may be giving away more authority than you realise and need to ensure that this is the best way of achieving your wishes without being too restrictive or too open! A General Power of Attorney will automatically be revoked if you lose your mental capacity at any point in the future. For this reason, it is not always the best option to choose and other Powers of Attorney may suit your needs better.

Enduring Power of Attorney

It is no longer possible to make an Enduring Power of Attorney (EPA) as they have now been replaced by Lasting Powers of Attorney. However, any EPAs which were made before the 1st October 2007 are still perfectly valid.

An EPA acts in a similar way to an LPA by allowing a chosen person, known as an Attorney, to act on behalf of the donor in making decisions about their property and financial affairs.

Under an EPA the Attorney can act straight away (unless the document contained a restriction to the contrary). The EPA did not have to be registered at the Office of the Public Guardian unless the donor was deemed as beginning to lose their mental capacity. This is one of the main differences between the old EPAs and the new LPAs.

Although a new EPA cannot be entered into it may be that you have an old EPA and are unsure whether this still meets your needs or whether a new LPA would be better.

It may be that you have been appointed as Attorney under an EPA and do not know what to do, whether the document needs registering or how to do this and need help.

If the person who made the EPA is starting to lose mental capacity it is essential that the EPA is now registered at the Office of the Public Guardian without any delay. Our dedicated team can help guide you through this process.

Lasting Power of Attorney

A Lasting Power of Attorney (LPA) is a document which gives a person you choose, known as an Attorney, the legal authority to act on your behalf. You can have more than one Attorney and can also have replacement Attorneys who step in if your original Attorney can no longer act for you.

There are two different types of LPA:

- **Property & Financial Affairs LPA**
- **Health & Welfare LPA**

Property & Financial Affairs LPA

A Property & Financial Affairs LPA allows your Attorney to make decisions about your finances. This includes paying bills, collecting any income or benefits, selling or renting your property if necessary. This is subject to any restrictions or conditions which you may include in the LPA.

A Property & Financial Affairs LPA authorises your Attorney to act on your behalf at any time. This means that the LPA can be used by your Attorney regardless of your mental capacity. The advantage of this is that if you were mentally capable of dealing with your finances but were physically unable to deal with them, then your Attorney can step in and assist you. However, if you prefer, restrictions can be included to ensure your Attorney can only act when you are mentally incapable of doing so.

A Property & Financial Affairs LPA does not take any authority away from you. You may continue dealing with your financial affairs, with as much, or as little, assistance from your Attorney as you wish.

Health & Welfare LPA

A Health & Welfare LPA allows your Attorney to make decisions regarding your welfare - such as where you should live and the type of care you should receive. It also deals with consent to medical treatment.

This LPA differs from the Property & Financial Affairs LPA in that here an Attorney can only make Health & Welfare decisions when you lack the mental capacity to decide for yourself. For example, if you were unconscious or were unable to make a decision because of the onset of a condition such as Dementia or Alzheimer's then your Attorney can make that decision for you. However while ever you have mental capacity your Attorney has no authority to act for you.

Everyone hopes that they will always be able to manage their affairs and make their own decisions. Unfortunately, this isn't always true. It is therefore essential to make an LPA while you are still capable of deciding who you would want to make the decisions if you cannot.

If you do not make an LPA and you then lose mental capacity anyone can apply to the Court of Protection for a Court Order to give them the authority to act on your behalf. Not only can this cost a lot more than a Power of Attorney but it also takes a substantial amount of time, and it may be that the person who applies is not the person you would choose to deal with your affairs. It is therefore essential that you act while you can, to ensure your wishes are implemented.

Your Attorney can be anyone over the age of 18 who is mentally competent. This may be your spouse or child, another family member, a friend or a professional. While your Attorney has a legal obligation to act in your best interests at all times, your choice of Attorney is still very important. Your Attorney needs to be someone you trust to make decisions for you and who is happy to act in this role.

Registration - Before an LPA can be used by your Attorney, it needs to be registered with the Office of the Public Guardian. This process can take several months. Many people choose to register their LPA straight away so that it is ready for use in the future when needed.

Business Powers of Attorney

A Lasting Power of Attorney can also be drafted in order to provide cover for your business needs and enables you to create a Business Power of Attorney.

- Have you ever considered what would happen if you lost mental capacity and could not continue to run your business?

- Can anyone else run your business for you?

- Do you have any provisions in your business paperwork stating what happens in the event of your mental incapacity?

- Is anyone else authorised to run your business or are you part of a professional body that restricts who can run your type of business?

From a practical point of view it may be very useful to have a business LPA in place in order to ensure that if you are ill, injured or even just out of the Country and unable to deal with the day to day management of your business then someone else can stand in for you.

However, on a more serious note, there are huge impacts on your business if you were to lose mental capacity. In 2014 the law changed. Previously, if a Director of a company lost mental capacity the remaining Directors could remove him from the role, to try and protect the business and the assets. This is no longer possible as it amounts to disability discrimination. The biggest problem with this is that if the business's bank discovers that a Director of a Company has lost mental incapacity then after only 28 days the bank can call the business's loans/overdrafts in. The bank is entitled to do this in order to protect their interests in the business. This could have a huge impact on your business and may even result in its closure.

Having a Business LPA in place means that you can ensure that in the event of your mental incapacity someone can deal with managing your business to either ensure it continues in your absence or deals with closing the business on your behalf

About Taylor Bracewell

Taylor Bracewell Solicitors is a dynamic and forward thinking legal firm with offices in Doncaster and Sheffield. Established for over 100 years, and very well regarded within the legal sector, Taylor Bracewell has weathered the drastic changes in the legal landscape and has emerged as one of the most vibrant and well respected law firms in the region.

Constant evaluation of how we deliver our services and innovative ways of working has made it possible for us to offer something different to the legal market.

We are passionate about providing individual service and connecting with our clients on a one to one basis. This enables us to fully understand our clients' legal needs and to deliver exceptional value in all our services.

If you require any further advice about going into a care home please contact our team on

01302 341 414 **0114 272 1884**

Taylor Bracewell can also help you with the following legal issues:

Commercial Property
Family Law
Employment law
Disputes
Medical Negligence
Personal Injury Claims
Business/Company Law
Business Disputes
Charities
Wills, Probate and Trusts
Asset Protection
Inheritance Tax Planning
Powers of Attorney and Court of Protection

OUR OFFICES ARE LOCATED:

17-23 THORNE ROAD, DONCASTER, DN1 2RP
1 RAILWAY COURT, TEN POUND WALK,
DONCASTER, DN4 5FB
11 PARADISE SQUARE, SHEFFIELD, S1 2DE

01302 341 414 AND 0114 272 1884
ENQUIRIES@TAYLORBRACEWELL.CO.UK
WWW.TAYLORBRACEWELL.CO.UK