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drummondmiller LLP

‘Should I consider granting a Power of Attorney?’



CLOSE TO YOU POWER OF ATTORNEY

At Drummond Miller, we believe we cannot overemphasise the importance of granting a Power of Attorney. We have provided this note to explain the importance of Powers of Attorney and hope you find it helpful. If any points require further explanation, please do not hesitate to contact us.

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a written document giving someone else authority to take actions or make decisions on your behalf. You choose the person you want to help you, called an **Attorney**, and decide what powers your Attorney should have.

You can give your Attorney the authority to make decisions relating to your **financial and property affairs** and also your **personal welfare**.

A Power of Attorney lets you say who you want to look after your affairs and what you want your Attorney to be able to do for you if you are incapable of doing so for yourself.

WHY SHOULD I CONSIDER GRANTING A POWER OF ATTORNEY?

The purpose of granting a Power of Attorney is to ensure that, should you ever become unwell and unable to manage your day-to-day finances, or incapable of making decisions about your personal welfare, your interests will continue to be protected by the person, or persons, you have chosen.

WHAT WOULD HAPPEN IF I DID NOT HAVE A POWER OF ATTORNEY?

If you become unwell and unable to manage your day-to-day finances, your bank and other organisations will not accept instructions from anyone who has not been legally authorised to act on your behalf. Your family or friends may have to go to court to get the authority to act on your behalf.

The same applies if you become incapable of making decisions about your personal welfare.

The court procedure is complicated and can be expensive. According to evidence submitted to the Scottish Parliament (2006), the average cost for the court application is between £2000 and £3000.

If the person authorised to act on your behalf has been appointed by court rather than by Power of Attorney, there can also be continuing annual costs of accounting to the Office of the Public Guardian and compulsory insurance premiums.

It can also take several months to have someone formally appointed to act on your behalf.

WHEN SHOULD I CONSIDER GRANTING A POWER OF ATTORNEY?

The most important thing to consider is that you can only grant a Power of Attorney whilst you are capable of understanding its nature and extent. If you lose capacity through illness or accident, it is too late and the court procedure discussed above may have to be used.

Nobody likes to think that they may not be able to look after themselves but accidents or illness can happen to anyone and at any time.

I'M FAR TOO YOUNG TO THINK ABOUT THIS...

People will often not consider granting a Power of Attorney until they are older. However, many people will have a Will drawn up when they are quite young and have perhaps bought a house or are starting a family. They want to ensure that, should anything happen to them, their wishes would be carried out and life will be made as easy as possible for the family or friends they leave behind.

It is worth considering a Power of Attorney for the same reasons. Should you lose capacity, a Power of Attorney can ensure that your family will be able to easily take over management of your affairs and make any urgent and long-term decisions about your welfare.

HOW DO I GO ABOUT GRANTING A POWER OF ATTORNEY?

Your solicitor at Drummond Miller will be happy to draft a Power of Attorney for you. We will fully explain the document to you and take your instructions.

Once you have confirmed that you are satisfied with your draft Power of Attorney, a further meeting will be arranged so that you can sign the final version and the certificate attached to it, stating that you are capable of understanding the document, can be signed by your solicitor or a doctor if appropriate.

The Power of Attorney must be registered with the Office of the Public Guardian before it can be used, even if you are still capable of doing things for yourself.

We usually recommend that your Power of Attorney is registered as soon as possible, although it is up to you to decide. Registering the Power of Attorney does not mean that it will be used straight away. We will keep the registered document in our safe until it is required. By registering the Power of Attorney at an early stage we ensure that, should you lose your capacity suddenly, it can be accessed quickly.

WHAT WILL MY SOLICITOR NEED ME TO DECIDE?

Your solicitor will take you through the whole document but some important things for you to consider are:

What kinds of powers would you like to include?

You can include things to do with money or property only (called a **Continuing Power of Attorney**) or just decisions about your health or personal welfare (called a **Welfare Power of Attorney**) or both.

Who do you wish to appoint as your attorney?

You can appoint who you want, a family member or friend, a solicitor or accountant or a combination. You can appoint someone to deal with your financial matters and someone different to deal with your personal welfare. We usually suggest that you appoint at least two joint Attorneys or a substitute Attorney. This way, you will still be protected if something happens to one of your Attorneys.

Do you wish to impose restrictions on your Attorney's power to invest?

If you have ethical objections to certain types of shares (e.g. tobacco, weapons, alcohol), you can restrict your Attorney's power to invest your money accordingly.

Would you be happy for your Attorney to make gifts on your behalf?

You can give your Attorney power to make gifts on your behalf for Christmas and birthdays. This power can also be expanded to include gifts to try and save Inheritance Tax. When you die, if your assets are more than the Inheritance Tax threshold, there may be Inheritance Tax to pay. Your Attorney, if he or she thought it sensible and in your interests, could give away funds, probably to family members, to use up your tax allowances and try and save Inheritance Tax.

Would you be happy for your Attorney to see your Will?

Usually, your Will is confidential until after your death but it can be helpful to your Attorney to know about your Will so he or she does not do anything that might affect it.

frequently asked questions

The following are some common questions about Powers of Attorney and the answers provided by the Office of the Public Guardian.

WHAT DOES INCAPABLE MEAN?

Your capacity could be impaired gradually by old age, or suddenly as a result of an accident or illness. A medical doctor will be able to say whether or not you are incapable.

WOULD MY PARTNER OR FAMILY BE ABLE TO HELP WITHOUT A POWER OF ATTORNEY?

No, no one has the automatic right to take actions on your behalf without legal authority.

IS A POWER OF ATTORNEY NOT FOR PEOPLE WITH LOTS OF MONEY?

No, it is not just about looking after money and property. It can also let you plan who should decide personal welfare issues for you.

WHAT DOES THE PUBLIC GUARDIAN DO WITH MY POWER OF ATTORNEY?

The Public Guardian keeps your signed Power of Attorney and sends a copy with a certificate to who ever sent it in. The Public Guardian also sends you a copy of the Power of Attorney.

CAN MY ATTORNEY USE MY POWER OF ATTORNEY BEFORE I BECOME INCAPABLE?

Yes, they can help you with your finances if you want them to do so but they cannot make decisions about your welfare until you are no longer able to make those decisions for yourself.

WHAT HAPPENS IF MY ATTORNEY BECOMES UNABLE TO ACT ON MY BEHALF?

If your attorney is not able to act for you then you will need to draw up a new Powers of Attorney if you are still able to do so. For this reason it is usually a good idea to have more than one attorney or maybe what is called a **substitute** attorney to step in if your attorney can no longer do things for you.

WHAT HAPPENS IF MY PARTNER IS MY ATTORNEY AND WE SPLIT UP?

It depends on the wording in your Powers of Attorney whether your partner can still act on your behalf or whether the Powers of Attorney can no longer be used.

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