

Power of Attorney (ref 06)

- 1.** A Power of Attorney is a private legal document that enables someone (the donor) to appoint one or more people, called attorneys, to manage their financial affairs and property, and personal and welfare issues either now or in the future. This document is very often made by elderly people who anticipate the onset of illness.
- 2.** The person making a Power of Attorney needs to be mentally capable of understanding the meaning and effects of the Power of Attorney they wish to execute.
- 3.** It may be possible for a person with a learning disability to understand that making a Power of Attorney will give another person responsibility for all their financial affairs and/or their personal and welfare affairs (for example, where they should live). This in turn allows the appointed attorney to apply for a mortgage or property on their behalf. This can then be a route to buying property even where legal capacity is in question.
- 4.** Prior to October 2007, there existed an 'Enduring Power of Attorney' (EPA). No new EPAs can now be set up, although those validly created before that date will remain valid even after October 2007. Under an EPA, an attorney only has the authority to deal with the donor's financial affairs and property.
- 5.** From October 2007, Lasting Power of Attorney (LPA) has been created. There are two types: a personal welfare LPA, and a property and affairs LPA. These are separate arrangements. Even if people set up both LPAs, the future attorneys do not have to be the same people. LPAs can only be used after they have been registered with the Office of the Public Guardian.
- 6.** Attorneys must act in the best interests of the donor and consider the donor's needs and wishes as far as possible. They have a duty to keep the donor's money and property separate from their own and other people. They have a duty to keep accurate accounts of all their dealings and transactions on the donor's behalf, and to be ready to produce them at any time. The donor's money and other assets must remain in the donor's name.
- 7.** Careful thought should be given regarding the power that will be given to the attorney because they can have wide powers and are not usually supervised in their dealings with the donor's affairs. More than one attorney can be appointed. Appointing attorneys to always act jointly is a safeguard, or adding restrictions or conditions to the LPA.
- 8.** Registration is required when the donor is (or is becoming) incapable of managing their affairs. This does not change the nature of the attorney's powers, but it does mean that attorneys are answerable and accountable to the Court of Protection if their actions are called into question. It also means that the LPA or EPA cannot be terminated by the donor or the attorney without the consent of the Court or the Office of the Public Guardian. Attorneys do not have to supply medical evidence of the donor's incapacity, unless there is a condition written into the power that requires this. A donor is entitled to be informed of the application to register the Power of Attorney. The majority of LPA's made by people with a learning disability will need to be registered.
- 9.** More information and guidance on these processes and an attorney's powers and how they should act can be found at www.publicguardian.gov.uk.

If you require further information or have other queries contact Housing Options.

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