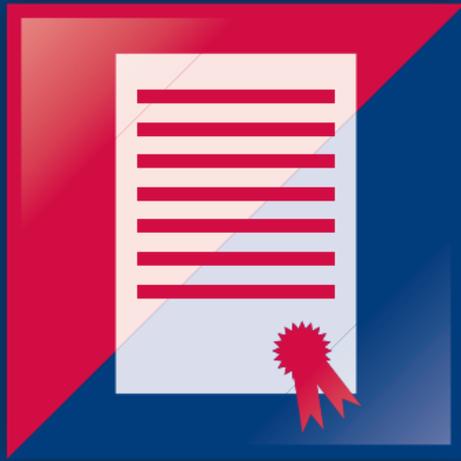


Fulton's

Solicitors & Estate Agents



Guide to Powers of Attorney

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Why a Power of Attorney?

The value of granting a Power of Attorney cannot be overestimated. Human longevity is increasing. In a recent census, it was disclosed that there are more people alive over the age of 60 than under the age of 16. When we are young and perhaps have a young family, we have no difficulty in accepting it is appropriate to arrange life insurance to provide protection for our families in the event of early or untimely death. Similar considerations apply throughout life and in particular when we become older, a granting of a Power of Attorney is of importance. A suitable Power of Attorney can mean that our families can avoid the horrendous difficulties which can arise when an individual loses mental capacity.

In such circumstances, if no suitable Power of Attorney is in place, the financial and business affairs of the client can be impossible to manage in the short term. If the loss of capacity is permanent, then the family may require to go through the complicated, time consuming and expensive process of having a Financial and perhaps Welfare Guardian appointed through the court. All this expense and distress can be avoided if a suitable Power of Attorney, which allows speedy and appropriate intervention on behalf of the person concerned, is in place.

What is a Power of Attorney?

In its simplest form a Power of Attorney is a written form of mandate or agency whereby a person authorises another to act on his/her behalf.

What is a Continuing Power of Attorney?

The Adults with Incapacity (Scotland) Act 2000 introduced a new concept to Scots Law of Continuing and Welfare Powers of Attorney. Previously a Power of Attorney was only valid for as long as the party granting it had continuing mental capacity. The aim behind the 2000 Act was to allow the powers granted in the document to continue if the party lost mental capacity. A continuing Power of Attorney essentially allows the Attorney to deal with all financial affairs of the party granting it.

The deed will normally specifically list the more important powers but these normally include the power to operate bank/building society accounts; deal with any shares or investments; deal with any income tax returns and to deal with any house or other heritable property owned or occupied by the party.

It should be noted that Powers of Attorney cannot be granted to an Attorney to sign or alter a Will or to appoint another Attorney as substitute Attorney.

What is a Welfare Power of Attorney?

This is one of the most sweeping changes in our law in the last decade. Where a person has lost mental capacity, a party holding a Welfare Power of Attorney can make decisions as to where the adult should live and what care and services are required; arrange or consent to medical or dental treatment and make decisions regarding the general life and activities of that person.

When does the Power of Attorney become effective?

We would suggest that a Power of Attorney contains a trigger clause whereby the document would only become effective on medical evidence establishing mental incapacity or on express written instructions from the party granting the deed that they would wish the deed to be used.

How does the deed become effective?

The deed requires to be registered with the Office of the Public Guardian for which a registration fee is paid to that office. The office then issues a formal certified copy of the document for use.

Once granted can it be revoked?

Provided the party granting it retains mental capacity then the Power of Attorney can be recalled at any stage.

Continued over...

Are the actings of the Attorney supervised?

Once the document has been registered, responsibility lies with the Office of the Public Guardian (OPG) for supervision of the activities of the Attorneys. The OPG has powers to take formal action to seek removal of an Attorney if their investigations prove that the Attorney has acted improperly or outwith the scope of his authority.



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