

# Fulton's

Solicitors & Estate Agents



## Guide to Prospective Attorneys

[www.fultonslaw.co.uk](http://www.fultonslaw.co.uk)

## Responsibilities of the Attorney

An individual who accepts an appointment as an Attorney takes on a responsibility which can on occasions be quite onerous. The attorney requires to comply with the principles of the Adults with Incapacity (Scotland) Act 2000. Detailed guidance is set out in the Code of Practice published by the Scottish Government in March 2001. An attorney failing to comply with the principles set out in the Act and the Code of Practice and who acts negligently could theoretically be found liable in damages to the party granting the Attorney ("granter"). It is important therefore that an Attorney is aware of the degree of responsibility and the risk involved in acting as such Attorney. An Attorney is no more than an agent for the person appointing them but the provisions contained in the Act ensure that the responsibility of an Attorney goes well beyond that of an "old fashioned agent".

## What exactly does an Attorney require to do?

The Act sets out guiding principles which an Attorney requires to follow. The principles are as follows:-

- (a) any decision or intervention taken must be for the benefit of the granter;
- (b) the Attorney must take the least intrusive or restrictive method of intervening on behalf of the granter;
- (c) the Attorney must take account of the known past and present wishes of the granter;
- (d) the Attorney should consult with "relevant others" i.e. the nearest relatives of the adult, the primary carers and any other appointee under the act. This requirement is only to consult, however, and does not compel the Attorney to simply follow the views of the "relevant others" and finally
- (e) the Attorney should endeavour to encourage the skills, training and education of the granter where this is appropriate and relevant.

## The Code of Practice

The Code of Practice should be regarded as a “bible of best practice for attorneys”. The code itself consists of just under 80 pages. A copy of the code can be found on the website of the Office of the Public Guardian, ([www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)).

An Attorney must at all times make it clear the capacity in which he is acting. If an Attorney fails to make clear he is acting purely as Attorney for another party, then he may find himself/herself incurring personal liability to third parties with whom contracts are agreed.

This brief note is intended to be helpful and of an informative nature. It is not intended to dissuade individuals from accepting office as Attorney.

An Attorney who acts properly, complies with the Principles and terms of the Code of Practice and who takes appropriate legal advice when necessary is unlikely to encounter any difficulty.

The Principles and the Code of Practice have been drawn up precisely for the benefit and protection of those granting Powers of Attorney. The granter has reposed full faith and trust in you to act in his best interests and in following the Code of Practice, you will be doing so.

# Fulton's

Solicitors & Estate Agents

1087 Cathcart Road

Mount Florida, Glasgow G42 9XP

Tel. **0141 632 2248** Fax. **0141 649 0301**

Email. **[enquiry@fultonslaw.co.uk](mailto:enquiry@fultonslaw.co.uk)**

4 Howie Buildings, Mearns Road

Clarkston, Glasgow G76 7ET

Tel. **0141 621 1816** Fax. **0141 621 1820**

Email. **[enquiry@fultonslaw.co.uk](mailto:enquiry@fultonslaw.co.uk)**