



POWER OF ATTORNEY & ENDURING GUARDIANSHIP

"For that exceptional personal service"



A wooden gavel with a silver band is positioned diagonally across the frame. It rests on a document that has the words "Power of Attorney" written in a large, elegant, cursive font. The background is a soft, out-of-focus image of the document and the gavel.

What is a Power of Attorney?

A Power of Attorney is a document by which you can appoint someone else to make financial decisions on your behalf.

Why do you need a Power of Attorney?

In the future, either through accident or illness, you may be unable to manage your financial affairs. Unless you have made valid arrangements for an Enduring Power of Attorney, your bank accounts and other assets may be frozen. This can necessitate your family having to make an application to the Guardianship Tribunal for a Financial Management Order. This could result in someone that you do not want having control over your financial affairs.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney continues to be effective if you lose capacity through unsoundness of mind. Enduring Power of Attorney documents have a certificate attached which must be signed by a Solicitor, and by the Attorney accepting the appointment. If you have an Enduring Power of Attorney in place, whilst you have the capacity to do so you can still manage your own finances and revoke the appointment at any time.

If the certificate is not signed by a Solicitor at the time the Power of Attorney is made, then the Power of Attorney ceases to have any legal validity once you lose capacity or become unable to manage your financial affairs on your own. The document will essentially be worthless.

What can an Attorney do?

Should you impose any restrictions or limitations?

This is one of the most important considerations when preparing a Power of Attorney document.

Without any restrictions or limitations, it is possible for your Attorney to operate all your bank accounts, take out loans, buy, sell, mortgage, transfer or lease properties all without your knowledge. If the Power of Attorney document is required for limited purposes or for a limited period then it is appropriate for conditions to be included in the document. However, if the Power of Attorney is not for a limited purpose and is to protect you into the future it may be best not to include any restrictions.

We will be able to advise you what is appropriate when you provide us with instructions.



What is an Appointment of Enduring Guardianship?

Similar to a Power of Attorney, an Enduring Guardianship allows you to retain control of your personal affairs. Whilst a Power of Attorney is limited to matters of a financial nature, an Enduring Guardianship allows you to appoint someone to make health and lifestyle decisions on your behalf (including medical decisions) once you become unable to make these decisions on your own.

If you are unable to manage your own personal affairs, issues such as providing medical consent to non-urgent surgery may result in you having to wait for the appointment of the Public Guardian before medical consent is able to be given on your behalf.

Similarly, if there is a dispute in your family or between medical advisors as to what arrangements should be made for your care, an Appointment of Enduring Guardianship will resolve this dispute as your Guardian has the legal authority to make these decisions on your behalf.



What is the role of an Enduring Guardian?

An Enduring Guardian has the power to make health and lifestyle decisions on your behalf once you are unable to make those decisions for yourself.

These decisions include where you are to live and whether (based on medical advice) extra assistance is necessary, and what health care you are to receive.

An Enduring Guardian can also provide medical consent on your behalf for any medical procedure. If the Appointment of Enduring Guardianship is worded appropriately, the Enduring Guardianship document can authorise your Guardian to make the decision to terminate the life support if you are in a coma or vegetative state, and the medical opinion is that there is little chance of you recovering.

Who should you appoint as your Attorney and/or Enduring Guardian?

You can appoint the same person as both your Attorney and Enduring Guardian however you do not have to.

You can also appoint more than one person for the role if you wish to do so, and their appointment can be made joint or joint and several. If joint, they must make all decisions together.

Your Attorney and/or Enduring Guardian needs to be over the age of eighteen years, preferably local to you, and in good health.

It is important that you have complete and absolute trust in both your Attorney and Enduring Guardian.

It is also important to give careful thought to whether the person(s) you have appointed can make both financial and/or medical decisions on your behalf.

Is it possible to change my Power of Attorney and/or Enduring Guardianship documents?

Yes, provided that you are still of sound mind.

There are certain legal requirements that need to be complied with to validly revoke the documents.

Once you are no longer able to make decisions relating to your finances and health/ lifestyle on your own, the Guardianship Tribunal is the only body that can appoint an Attorney and/or Guardian to act on your behalf, or make a change to your Power of Attorney and/or Enduring Guardianship documents.

Whilst you are still of sound mind you can change and/or revoke and make new documents as many times as you like as your circumstances change.

In fact, you should review these documents every couple of years to see if they still meet your needs(i.e. have you appointed a child who no longer lives nearby or has become estranged? Have you appointed a spouse who is no longer in good health etc).

What do you do now?

As you can see these documents are extremely important to yourself and your family – so don't delay, call Meehans Solicitors today!



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