

Power of Attorney Explained!

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No one likes to consider a time when they may not be able to make their own decisions as a result of catastrophic illness or dementia, but sadly it is a reality, and when illness strikes, it may do so suddenly and without warning.

My practice is therefore to suggest to clients of a "certain age", that they consider granting a power of attorney in favour of a trusted family member or friend. If there is no one obvious to take on the role, this firm has a trustee company which can be appointed, at least to look after your financial affairs.

The law is regulated by The Adults with Incapacity (Scotland) Act 2000 which completely overhauled this very outdated field of legal practice. Under this Act it is possible to appoint two different types of attorney to look after your affairs.

A welfare attorney will only be able to act on your behalf if it has been established by a doctor that you lack legal capacity and are unable to make your own decisions about your personal welfare such as what medical interventions might be appropriate, where you should stay, and who should take care of you.

A financial or continuing attorney can act while you still have mental capacity but where you might find it convenient, perhaps because of physical frailty, to have someone else managing your affairs. This power will continue if you were ever to lose legal capacity.

The attorney is in the first instance given general powers to do anything which you yourself could do and to deal with your property as you could deal with it. However there are by statute and by common law certain powers which must be specifically granted to the attorney and contained in the deed. These include e.g. the power to sell your house and the power of investment to help pay for your care. Given appropriate authority, an attorney may even be able to deal with Inheritance tax planning on your behalf or to give gifts to your family.

As will be appreciated from the wide ranging rights which are vested in the Attorney, this is not something to be entered into lightly and you require to have complete trust in your attorney. There are however certain safeguards, as the deed of appointment has to be registered with the Office of the Public Guardian to be effective, and a code of practice has been established by that Office for all attorneys. This can be viewed on www.publicguardian-scotland.gov.uk or you can contact the OPG directly on 01324 678300 for more information.

Alternatively any one of us here in the private client department will be able to advise you fully on all aspects of granting a power of attorney. This is a very simple matter to put in hand though it will involve either coming here to the office or having a solicitor visit you to have the deed signed. This is to ensure that you fully understand the nature of the deed and that you are not being put under any undue pressure by anyone to grant the deed in their favour.

Remember by the time you need an attorney, it may be too late to appoint one. The alternative is for your relations to have to petition Court to have a Guardian appointed following lengthy consultations and the obtaining of medical and social work reports. As a result this is an expensive and prescriptive process

Granting a power of attorney should be seen in the same way as paying an insurance premium. Everyone hopes that they won't have to rely on it, but they are very grateful to have the cover, if it becomes necessary. We all hope that we won't have to use it but you would hate to be without it in the event of ill health.



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