



## >>POWER OF ATTORNEY

This Plain English Guide answers some of the more commonly asked questions about granting Power of Attorney, but remember that your solicitor is available to answer any other questions or provide advice when you need it.

### >>What is a Power of Attorney?

A Power of Attorney is a legal document that gives another person or organisation the power to deal with your assets and financial affairs while you are still alive. Granting a Power of Attorney to an individual, or an organisation, is a very serious decision. The person you ask to look after your financial and legal affairs must be responsible, knowledgeable and experienced. More importantly, you must be able to trust them to ensure they keep your best interests at heart.

### >>What types of Power of Attorney are available?

An **active** Power of Attorney is one where you direct an individual or organisation to act immediately to make your financial and legal decisions.

A **dormant** Power of Attorney is one in which the document is activated if and when required.

An **enduring** Power of Attorney is a permanent arrangement that will remain effective even if you suffer loss of capacity due to illness or unsoundness of mind.

A **limited** Power of Attorney is restricted as to time or to carrying out only certain tasks.

### >>Why would you need a Power of Attorney?

Appointing someone, or an organisation, to act on your behalf is usually a safeguard for your interests and those of your loved ones. You may be able to look after your assets and financial affairs now, but there may be reason to believe that you won't be able to in the future.

For example if you become ill, go overseas, are confined to hospital or become unable to go to banks, government offices or real estate agencies then you may need someone else to do things for you.

If you want someone to be able to sign documents on your behalf relating to real estate then a Power of Attorney will be essential.

An enduring Power of Attorney can be useful if you become unable to look after yourself at some stage in the future. This could be due to physical problems, loss of mental capacity or something unforeseen such as an accident.

Making an Enduring Power of Attorney is a simple practical step to prepare for the future. If you make an Enduring Power of Attorney, you can choose the person who you want to be your attorney and you can decide yourself whether you wish to impose limits on what he or she can do.



## >>When should I make a Power of Attorney?

It is important to make a Power of Attorney *before* you need it. If a document suddenly needs to be signed while you are overseas, it may be quite difficult to give someone the appropriate authorisation. It is particularly important that you make an Enduring Power of Attorney while you are able to fully understand what you are signing. A Power of Attorney cannot be granted once you have lost full mental capacity.

A Power of Attorney usually starts as soon as it is signed and accepted by the attorney. However, if you do not want your attorney to start using the power straight away you can nominate a particular starting date.

## >>Who can I appoint?

Any person over the age of 18 can act as your attorney. It can be a friend who you trust or a close family member. You should ask the person you want to appoint if he or she will agree to be your attorney and look after your money and property.

If you do not want to appoint a relative or friend, then you may wish to appoint the public trustee, a trustee company or a professional advisor such as your solicitor or accountant. It must be remembered that professional attorneys will be entitled to charge a fee for acting on your behalf.

If you appoint more than one attorney, you need to consider whether you want your attorneys to act jointly (when they all agree and all sign the document) or jointly and severally (where any one will be able to act independently of the others). You also need to consider what happens if one of your attorneys dies.

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## >>What can my Attorney do?

Subject to any limits that you might wish to impose, your attorney can generally do all things that you can do with your money and your assets. For example, an attorney can sell, lease or mortgage your house, sell your personal belongings, deal with your bank accounts and sell your shares. An attorney generally cannot do things that you are doing in a representative capacity (such as acting as an executor in an estate) nor can an attorney make personal decisions about your health.

## >>What are my Attorney's obligations?

An attorney is under a duty to act in your best interests and is not entitled to obtain any benefit unless it is specifically authorised by the document.

An attorney must:

- keep the attorney's money and assets separate from the principal's money and assets; and
- keep proper accounts and records of how the attorney handles your money and assets.

If your attorney does not carry out the obligations properly, he or she is accountable to you.

## >>Can I cancel a Power of Attorney?

A Power of Attorney can be revoked or cancelled at any time as long as the principal still has mental capacity. You need to give a copy of the notice of cancellation to the attorney to ensure that he or she knows that the power has been revoked.

