

# Power of Attorney Factsheet



Caritas Legal Limited  
*sub umbras floret*

## Planning Ahead

When someone is ill or recovering from an illness they often feel at their most vulnerable. At the same time, there is a tendency to think about the future, and a desire to put ones affairs in order. From a legal perspective the main tools for forward planning are Wills and Powers of Attorney. Ideally everyone would have both, however it is often something that we put off doing as we think it is perhaps too expensive or time consuming.

It often takes a crisis situation to make us focus on what arrangements we have in place.

Simple Wills are inexpensive and should cost you no more than £100. Having a Will in place allows you to distribute your estate after death to who you want. Wills aren't just for people with big estates. No matter how much or little you have it is important to ensure that it goes to the right person.

Powers of Attorney are probably the most important document you can obtain. Not only do they safeguard your welfare and finances in the future but they allow you to chose who will be your Attorney, rather than having one imposed upon you.

## What is a Power of Attorney?

A Power of Attorney is a legal document whereby one person appoints another to make decisions and act for them. It can stipulate whether the Attorney can act immediately or that the Attorney can act in the event of the person granting the Power of Attorney becoming incapacitated.

There are three different types of Power of Attorney:-

- (i) A Continuing Attorney has powers in relation to property and/or finances for example to operate a bank account
- (ii) A Welfare Attorney has powers relating to the personal welfare of the individual such as consenting to medical treatment or choosing where the adult resides
- (iii) A Continuing and Welfare Attorney has powers in respect of both property and finance as well as welfare.

## Who can grant a POA?

Anyone over the age of 16 can grant a Power of Attorney, the essential element is that they must have full legal capacity.

Some people think capacity is an all or nothing concept, however this is incorrect. Capacity can fluctuate depending on the medical condition. A person may be able to make some decisions but not others.

**Who can be an Attorney?**

Anyone over the age of 16 can be Attorney. You can have more than one Attorney and/or substitutes. Whilst there is no limit on the number of Attorneys you can appoint the more you have the more difficult it is to reach agreement.

**When is it helpful/necessary?**

Instructing a Power of Attorney allows you to prepare for a time in the future when you may be unable to make decisions for yourself. Many people find it useful following illness, as they want to exercise control over who will make decisions for them in the future and find making a power of attorney cathartic.

Powers of Attorney are also useful in the case of fluctuating capacity where perhaps someone has had a stroke and understands everything going on around them but finds communication difficult. An Attorney can step in and act where necessary and equally step back as a person regains fuller capacity.

**How do I get one?**

Speak to a Solicitor who specialises in Powers of Attorney, and ask them to visit you either at home or in hospital. It should take around a week for the solicitor to prepare the documentation and return with it for you to sign. Thereafter, the solicitor will send it to be registered with the Office of the Public Guardian. You should receive the official copy within eight weeks approximately.

**How much does it cost?**

Fees vary depending upon the solicitor, however a general guide would be £250 to have the Power of Attorney prepared and £70 to register it.

**Are internet or shop bought Powers of Attorney valid?**

Many are, however you should always see a solicitor specialising in Powers of Attorney to make sure that it is drafted to suit you as an individual, to ensure that it is witnessed properly and to have the certificate of capacity completed.



For further information or to arrange a free initial consultation please call Lorna Brown of Caritas Legal on 01383 431101/0141 887 0066.

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