

CHILD & CHILD

POWERS OF ATTORNEY FOR ALL

Powers of Attorney are not just for the elderly and are almost as important as wills. Sudden mental incapacity could strike anyone, for example as a result of a severe stroke. If it happens, the onset of mental incapacity is not necessarily gradual.



An ordinary **general power of attorney** is a very short, simple document in which typically X appoints Y to manage all X's assets and affairs. This works unless and until X becomes mentally incapable, when it can no longer be used. It is then necessary for Y or someone else to apply to the Court of Protection for their **appointment as a Deputy** (formerly known as a Receiver).

Deputyships should be avoided if possible, because they involve considerable hassle and costs, including a court fee of £400, annual court fees thereafter, the taking out of a usually expensive insurance policy to cover any losses arising from the deputy's fraud or negligence, the filing of annual accounts and close supervision by the Office of the Public Guardian.

To avoid these problems, **Enduring Powers of Attorney (EPAs)** were introduced in 1985. These are relatively simple documents, which endure or work after the donor becomes mentally incapable. On the whole, EPAs worked well, they were cheap to make and popular. However, since 1st October 2007 these can no longer be made, although EPAs signed before that date are still valid.

Since the above date, EPAs have been replaced by more complex **Lasting Powers of Attorney (LPAs)** relating to property and affairs, which run to at least 11 pages. (There is also a second, less common, type of LPA relating to health and welfare which is referred to later in this note).

An attorney can act under an EPA at any time – it only needs to be registered with the Court if the attorney has reason to believe that the donor has become or is becoming mentally incapable. In contrast, an LPA has to be registered with the Court before it can be used.

Anyone who has assets should therefore sign a property and affairs LPA if they did not sign an EPA before October 2007. Obviously, after the onset of mental incapacity, any signing would not be valid.

Because the registration process with the Court for a property and affairs LPA has

been taking up to one year, we sometimes advise people to sign an ordinary power of attorney at the same time, as this can often be used in practice in the interim.

Some clients will also want to sign a **health and welfare LPA**, giving the attorney power to make health and welfare decisions on their behalf. These must also be registered with the Court before they can be used and a registration fee paid. However, unlike a property and affairs LPA, these can only be used where the donor lacks the mental capacity to make those decisions himself. If desired, the authority in these LPAs can extend to giving or refusing consent to the continuation of life sustaining treatment. A cheaper alternative to a health and welfare LPA is a simple advance decision (also confusingly known as a living will), which is designed to give guidance to doctors where the donor is incapable of expressing his wishes.

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N.B. This note is based on the law and practice as at March 2011. It is intended for general guidance only and should not be relied upon. Specific advice should be obtained in every case.