



## Legal Brief

### **Powers of Attorney – your questions answered. November 2007**

The recent changes to Powers of Attorney have brought a great deal of confusion. The following frequently asked questions should explain how the latest changes may affect you.

#### **WHAT IS AN ENDURING POWER OF ATTORNEY?**

An Enduring Power of Attorney (EPA) is a document that enables you to determine who you would like to deal with your property and finances, on your behalf, in the event that you become mentally incompetent or physically unable to manage your own affairs. These documents were replaced in October 2007 by a Lasting Power of Attorney (LPA), although EPAs still remain valid.

#### **WHY SHOULD I HAVE ONE?**

We often read or hear in the news of the importance of preparing Wills which determine where your assets would go when you die. Powers of Attorney are similarly important and can be very useful if you should become temporarily or permanently incapacitated, mentally or perhaps physically as a result of an accident or hospitalisation. It means that you can put control of your assets into the hands of a family member or a trusted friend.

#### **WHAT'S CHANGED RECENTLY?**

On 1<sup>st</sup> Oct 2007 Enduring Powers of Attorney (EPAs) were replaced by Lasting Powers of Attorney (LPAs), which have additional powers. However people with EPAs need not worry as their documents are still legally valid.

#### **WHAT ARE THE MAIN DIFFERENCES BETWEEN EPAs AND LPAs?**

Whilst EPAs only give control over finances and property, LPAs go further and allow your nominated attorney to take responsibility for your health and welfare decisions. A significant difference is that the new Lasting Powers of Attorney must be immediately registered with the Court of Protection, whereas the EPA can be left unregistered until you become mentally incapable. The Act invites us all to consider some uncomfortable choices but it does present us with an opportunity to take control of our futures in a way that has not been possible before.

#### **IF I DO NOT WANT TO PREPARE AN LPA BUT I AM WORRIED ABOUT MY HEALTH AND WELFARE DECISIONS, WHAT SHOULD I DO?**

As an alternative, you can prepare a "Living Will", otherwise known as an "Advanced Directive", which gives you the freedom to define medical care issues that you feel strongly about. This means that in the unfortunate event of terminal

illness where you might be incapable of communicating your wishes, your Living Will would be able to state your preferences in cases such as not accepting blood transfusions or not wishing to be resuscitated. Living Wills however are not legally binding but intended to reflect your wishes in a medical situation. An LPA carries more weight and is legally binding.

### **WHAT HAPPENS IF I BECOME MENTALLY INCAPABLE AND I HAVEN'T PREPARED AN EPA OR AN LPA?**

If you haven't prepared either document and you do become mentally incapable, then your next of kin must apply to the Court of Protection to become your official Receiver and will then be able to deal with your finances and property. The process is longwinded, costly and stressful so our advice to you is not to wait until you are beginning to lose the ability to manage your affairs before you consider making an LPA.

### **WHAT SHOULD I DO NEXT?**

Don't leave your affairs to chance. If you are at all unsure about how these changes will affect you, give Sheila or Shirah a call and we will be pleased to advise you or your family members at our premises, or we can visit you at home in the Basingstoke area.

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