

Powers of Attorney – not so enduring

By Shirah Real, solicitor, direct line 01256 854618, email sreal@phillips-law.co.uk

The law is changing to make it easier for us all to decide, while we're still healthy, what should happen if we become incapable of making decisions for ourselves about our money, property and even whether we should be kept alive if we suffer a debilitating illness.

Most people dread becoming so ill that they can't make decisions for themselves and become a burden on their families. None of us want to leave our children with the agonising dilemma of whether or not a life support system should be switched off. In the past people have been able to make advance treatment directives, known as living wills, but they have not been considered legally binding. But that is all about to change.

After 21 years, the Enduring Power of Attorney (EPA) is about to be replaced by a new 'Lasting Power of Attorney'. This Legal Brief looks at the differences between the two and suggests that making an EPA before October 2007 could be a very sensible thing to do.

What is an Enduring Power of Attorney (EPA) and what can it do?

An EPA is a document that allows you to appoint one or more persons (Attorneys) of your choice to act for you together or separately in managing your financial and property affairs now if you wish or in the future, should you become mentally incapable. You can set up an EPA as long as you are aware of what is involved and can show that you understand the process.

The EPA can allow Attorneys to deal with all of your property and affairs or you can restrict which assets your Attorneys can deal with. You may also restrict the EPA to state that Attorneys can only deal with your affairs once you have become mentally incapable. Some people allow the EPA to take immediate effect as it can be useful particularly if the donor is in hospital for an extended period of time. If you should become mentally incapable, your Attorneys must apply to register your EPA with the Court of Protection. You and certain relatives must be notified beforehand and all parties will have the opportunity to object to the registration. The big difference is that an EPA does not allow others to act in matters relating to your personal welfare.

New changes to the Law

From October 2007 Lasting Powers of Attorney (LPA) will replace EPAs. You will no longer be able to create an EPA, nor convert your EPA to an LPA. However, existing EPAs will remain legally valid. The new LPAs can extend beyond dealing with your financial affairs to personal welfare matters and decisions, if you so wish. You will also be able to place restrictions on what exactly your Attorney can deal with, such as property or restricting medical decisions.

What do these changes mean?

Probably the most significant change is the requirement that LPAs *must* be registered with the Court of Protection before your Attorneys can act and this may take up to 5 weeks. Your Attorneys will have the power to decide on issues such as where you will live, your care and medical treatment. They may also give or refuse consent to the carrying out or continuation of medical treatment, according to your wishes, although they cannot act if you are still capable of making those decisions for yourself.

What you should do next

If you have an EPA now it will remain enforceable after October. If you don't have one, we would strongly recommend that you put an EPA in place before October as it is a very useful and cost-effective legal document. LPAs are likely to be more expensive as they cover additional matters relating to your personal and health issues. If you were to become incapacitated without having granted anyone Power of Attorney and you have no family to help you, then you could be provided with an advocate to represent your interests and known wishes. And the Court of Protection will be able to settle any disputes over finances or welfare. 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.