

F.A.Qs on Powers of Attorney

What is a power of attorney?

It is authority that someone (the donor) gives by a deed to someone else (the attorney) to do things on his behalf. This can include signing documents, running a bank account, buying and selling property, instituting legal proceedings and virtually anything else concerning the donor's property. It can include power to execute deeds on the donor's behalf, and this is not covered by most other authorisations. It can permit all these things, or just one of them, depending on what the donor wants the attorney to do. Like other forms of authority (such as bank mandates), though, an ordinary power of attorney is no longer effective if the donor loses the mental capacity to carry out the transaction in question for himself.

What is an enduring power of attorney?

Between **1985 and 2007** it was possible to give an enduring power of attorney, which was effective immediately (as long as it did not contain a restriction or condition to the contrary) but which continues in force if the donor loses mental capacity. Enduring powers can no longer be granted, but existing ones remain effective.

What happens if the donor of an enduring power loses mental capacity?

If the donor starts to lose the capacity to manage his affairs, the attorney has a duty to apply to register the power. He must first give notice to the donor and usually to certain relations. The fee for registration is £130 and a solicitor is likely to charge around £200, depending on the work involved.

From the time that the mental decline begins until registration is completed, the attorney's power is limited to what is necessary to maintain the donor and protect his property.

What happens when the donor dies?

All powers of attorney die with the donor, and the donor's executor takes over. Of course, the donor may have appointed the same person as his attorney and his executor. If he did not make a will, someone may need to apply for letters of administration.

What is a lasting power of attorney?

Lasting powers were introduced **in 2007**. Like enduring powers, these can continue if the donor loses mental capacity. However, they do not start until they are registered. One type covers the donor's property (anything that he owns), but for the first time there is another type, covering the donor's health and welfare, in effect his body. This type enables the attorney to make a decision for the donor only if he cannot make the particular decision for himself.

The forms are more complicated than the older ones. There is a registration fee of £130 for each power, and a solicitor is likely to charge around £250 to £500 to prepare and register the deed or deeds.

Who can be an attorney?

Anyone over 18 years old can be appointed under a lasting power, provided, in the case of a property and affairs power, that he is not bankrupt. A trust corporation can be appointed under a property and affairs power, but this is likely to be expensive. More than one attorney can be appointed, to act together or separately.

Can someone with a mental disability grant a power of attorney?

Only if he can understand the nature of the powers that he is giving. Otherwise, if he has substantial assets, it will probably be necessary to apply to the Court of Protection for an order.