



Private Client

Power of Attorney

A Power of Attorney (POA) is a legal document appointing one or more persons to act on your behalf. This may be for a specific reason such as dealing with a transaction while you are on holiday or for more general reasons such as dealing with your finances and welfare if you are no longer able to do so yourself.

What Types of Powers of Attorney are There?

There are different types of POA for different purposes. They can cover your financial affairs or welfare matters, or both.

- Financial POAs can be for a specific transaction or a certain period of time, or they can be broad-ranging and last for an indefinite length of time if you are no longer able to deal with your own affairs. They can cover operating your bank accounts, paying bills, dealing with investments on your behalf, selling and buying property, dealing with your pensions and benefits and so on.
- Welfare POAs cover matters relating to your personal welfare such as decisions on appropriate care, accommodation, dress and diet, as well as giving consent to or withholding consent from medical treatment. Welfare POAs can only be exercised if you are not able to make these decisions yourself.
- Combined POAs cover financial and welfare matters in one document.

Who can be Appointed as an Attorney?

You can appoint whoever you trust and feel comfortable having deal with your affairs. You can appoint more than one person and joint Attorneys can be given the power to act independently of each other as well as together. This makes administration easier as there is no need for two signatures on every cheque and so on.

If you are only appointing one Attorney, you should consider including a substitute should they be unavailable or unable to act for you.

If you do not wish to appoint a family member or friend, you may wish to consider appointing your solicitor, either as your initial Attorney or as a substitute.

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“ Welfare POAs cover matters relating to your personal welfare. ”

“ Combined POAs cover financial and welfare matters in one document. ”

Are There Any Safeguards?

It is not the case that by drawing up a POA you are relinquishing control of your own affairs.

POAs can be drawn up now to become effective in the event that you are no longer able to manage your own affairs. To become effective, and to enable your Attorney to act on your behalf, the POA must be registered with the Office of the Public Guardian which supervises all such appointments. So you could draw up your POA now and simply put it away to be registered in the future, or you may wish to include provision that the POA must not be registered unless a doctor certifies that you are not able to manage your own affairs.

Attorneys must act in accordance with the provisions of the POA document as well as a Code of Practice set out by the Office of the Public Guardian. They must always act in your interests and, particularly for welfare matters, they must consult with you as far as possible in any decisions being taken. You can find more information on the Office of the Public Guardian's website at www.publicguardian-scotland.co.uk.

Why Do this Now?

We all hope that we will never need to have an Attorney dealing with our affairs. However, if it does become necessary you may already have lost the ability to put a POA in place. With increasing life expectancy as well as advances in medical science enabling people to live longer even after a serious accident and with long-term disabilities, more people are drawing up POAs whilst they are fit and healthy as part of their overall planning for the future. Like having an insurance policy in place, whilst hoping that your POA will never be needed, you will have the peace of mind that someone you trust and have appointed will be able to act for you if necessary.

What If I Don't Have a POA?

If you become unable to manage your affairs and do not have a POA in place, it may be necessary for a Guardian to be appointed. This involves an application to the Sheriff Court and can be time consuming and costly. Appointing a Guardian may cost around ten times as much as a drawing up a POA.

How Do I Draw Up a POA?

Lindsays can advise you on all aspects of Powers of Attorney. If you require specific advice on the issues raised in this briefing or would like more general advice or further information on our services, please contact us.

contact us

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