

Gebbie & Wilson Newsletter

FEBRUARY 2008

POWERS OF ATTORNEY

A Power of Attorney is authority given by an individual (the granter) to another person or persons (the attorney) to manage aspects of his/her affairs when that person loses the capacity to deal with them themselves. This can relate to financial and/or welfare matters.

Welfare Power of Attorney

A Welfare Power of Attorney is authority granted by a person to another to manage their personal welfare matters when they lose capacity to deal with these matters themselves.

Continuing Power of Attorney

A Continuing Power of Attorney is authority granted by a person to another person to manage their financial and/or property affairs when they lose capacity to deal with these matters themselves.

Combined

It is possible to appoint the same person to act as your Welfare and Continuing Attorney and incorporate this into the one document. If you wish you can appoint more than one person to act as joint attorneys. You could also provide for a substitute attorney.

When can powers be used?

Continuing powers can be used immediately after the power of attorney document has been registered by the Public Guardian unless the granter has incorporated a clause within the document which states that powers cannot be acted upon until a certain event has occurred. Welfare powers may only be acted upon after the power of attorney document has been registered by the Public Guardian and when the granter has lost capacity to make decisions on matters to which the powers apply.

All welfare powers of attorney granted after October 2007 will have to contain a statement that the granter has considered how they would wish their incapacity to be determined - for example, by certification by a Medical Practitioner.

The Document

A written document is needed which sets out the precise powers which the granter wishes the attorney to exercise. The document must be signed by the granter and incorporate a certificate by a solicitor stating:

- That he/she has interviewed the granter immediately prior to the signing of the document;
- That he/she is satisfied, because of their own knowledge of the granter or having consulted other named persons who know the granter, that the granter fully understands the nature of the powers being given and the extent of them; and
- That he/she has no reason to believe that the granter is acting under any influence or any other reason which should prevent the powers being given.

The documentation must then be registered with The Office of the Public Guardian (which charges Registration dues of **£60** per Power of Attorney).

Overriding Principles

The following principles must be observed and applied by anyone appointed as an attorney:

- *Benefit* – no action should be taken unless it will benefit the adult (granter).
- *Minimum intervention* – any action that is taken should be the least restrictive option available
- *Take account of the wishes of the adult* – the past and present wishes and feelings of the adult should be taken into account
- *Consultation with relevant others* – the views of the adult, nearest relative, primary carer, guardian, attorney or any other person deemed to have interest must be determined before any intervention is made
- *Encourage the adult to exercise whatever skills he/she has* – the adult should be encouraged, where possible, to exercise his/her skills in as far as they are capable concerning their financial affairs, property and personal welfare.

When acting as an attorney you must keep records of the exercise of your powers as these may be required at some point by the Public Guardian. You, as attorney, should notify the Public Guardian if you or the granter changes their address.

Termination

Continuing and welfare powers of attorney will last indefinitely except under the following circumstances:-

- The powers have been revoked by the granter or by a court order
- The granter has died
- When the attorney and granter are married, on a decree of divorce or separation, divorce or nullity of marriage unless the power of attorney states otherwise.
- The attorney resigns