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Lasting powers of attorney

There may come a time when you are no longer able to manage your own personal welfare or your property and financial affairs. This may come about suddenly and unexpectedly through an accident or illness, e.g. a stroke. If this happens you will want somebody you know and trust to look after your assets for you. You can do this by formally appointing a friend, relative or professional to act on your behalf through a lasting power of attorney.

Why do I need a lasting power of attorney?

If you do not have a lasting power of attorney and become unable to give the necessary instructions to manage your own affairs then your assets will become frozen until the court of protection appoints a deputy. This can take some time and in the meantime your finances and affairs may not be dealt with. This is particularly important for those with their own business where wages and bills must still be paid and contracts fulfilled and those with complicated investments, where expertise is needed to make decisions. You will have no opportunity to express how you want your affairs to be dealt with and, unfortunately, the court of protection process can be quite expensive and lengthy which means your assets may be reduced in value or lost altogether.

By planning ahead and granting a lasting power of attorney you are able to give your instructions, on your terms, to your chosen attorney(s) whilst you are of sound mind. As a result it makes sense from both a practical and financial point of view to appoint an attorney before problems arise.

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What is involved?

A form needs to be completed granting the lasting power of attorney. This can be done at anytime but it does not become effective, i.e. the attorney cannot act on your behalf, until it is registered with the court of protection.

In order to complete the form the following people need to be considered:

- The donor: you - the person who makes the lasting power of attorney, appointing the attorney(s)
- The attorney(s): the person(s) you choose to make decisions on your behalf. This person(s) must agree to take on this very responsible role. And it is a responsible role. Consider how well each proposed attorney deals with their own welfare and financial affairs. And remember, you will probably not be able to check up on your attorney if you become incapable so it may be a good idea to appoint two to prevent any abuse of the role.
- Named person(s): somebody you, the donor, chooses who will be notified when an application is made to register the lasting power of attorney. In order to safeguard you they have a right to object to the registration of the lasting power of attorney if they feel that you have been pressurised into making it.
- Certificate provider: a person you choose to complete the part B certificate in the form. This is another safeguard for you, confirming that you understand the form and that you are not under pressure to complete it.
- Witnesses: somebody who signs the form to say they have seen you, the donor, and/or the attorney sign and date the form.

You can apply to the public guardian to register the lasting power of attorney at any time after it is made, providing you have the mental capacity to do so. Your attorney can register it at any time, either before or after you have lost capacity.

Once registered, the lasting power of attorney continues indefinitely. However, you can cancel it at anytime providing you have the mental capacity to do so. Any dispute as to whether it has been cancelled or not will be decided by the court of protection.

To find out more talk to Robert or Jane or visit www.gardandco.com.

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