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ENDURING POWERS OF ATTORNEY

Do you know who you wish to look after your financial affairs if you become unable to do so yourself, perhaps because of old age, an accident, illness or for any other reason?

If you have taken no action someone will have to apply to the Court of Protection to be appointed your Receiver. That person may not be who you would have chosen.

The application will give rise to substantial expense. The Court will charge a commencement fee of up to £200.00 and will require a medical report from your doctor who will also be entitled to a fee. The application has to give full particulars of your financial affairs, and if made through a solicitor the Court usually allows a fee of £705, sometimes more.

At the end of each year the Receiver must give an account to the Court and pay a fee of at least £200. In addition if your estate requires management the annual fee is likely to be about £550. If no one else suitable is prepared to make the application the Court may appoint a professional person or the Public Trustee. Substantially more fees will then be payable. The appointment of a

Receiver is, indeed, an onerous and expensive matter.

The Enduring Powers of Attorney Act 1985 provides a much simpler and cheaper option. By completing what is in essence a simple form you decide who you wish to appoint to look after your finances.

The Deed is unlikely to cost more than £100 and usually costs less, particularly if made when making a Will.

You may choose one or more Attorneys. If you choose more than one you decide whether they are to act together or whether they may act separately.

We usually advise that you should appoint two Attorneys and allow them to act separately, because if they have to act together the appointment will fail if one of them for any reason can't or won't act.

You can appoint more than two people: you may wish to appoint your spouse to act alone but could by a separate Deed appoint two others (perhaps your children) to act, either together or separately, in case your spouse is not able to; you may wish your family to look after your personal finances and a business partner to manage your business affairs.

You may wish a different person to act for you in your capacity as a Trustee if you hold such an appointment, but that may last for only a year.

The Act provides that an Enduring Power of Attorney may continue

even if you become mentally incapable: that, very largely, is the whole point of the Act.

The Power of Attorney does in fact come into effect immediately unless the contrary is clearly stated in the Deed. We advise that it should come into effect immediately but suggest that as a safeguard against it being used until you authorise it or the need arises, you should leave the Deed with us, perhaps to be held with your Will, so that it is made available only when needed. We make no charge for holding legal documents in safe custody.

We will give you a copy of the Deed but would not normally allow it out of our possession without your specific authority. In view of its very nature we presume that we have your authority to give it to the Attorney if we are satisfied after making reasonable enquiries that the time has come when you need assistance in managing your finances and the Deed ought to be registered with the Court.

You may wish to authorise us to disclose the contents of your Will to your Attorney(s) if we think fit, should you become mentally incapable.

We repeat that the Enduring Power of Attorney may continue if you become mentally incapable. As a safeguard the Attorney must then register the Deed with the Court of Protection.

You can cancel it at any time before then.

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The registration fee is only £75. There are no further expenses or formalities except that the Attorney must give to you and your nearest relatives written notice that an application is being made to register it. In that way you, or your relatives, will be able to write to the Court to protest, so that the Court may investigate whether the system is being abused. Once the deed has been registered the Attorney has full power to deal with your finances as he thinks is best for you.

Nevertheless, only grant the Power to someone who you can completely trust.

We will be happy to be appointed but that will give rise to fees. The Court can intervene at any time. You may have the Court cancel the Deed if you recover.

An Enduring Power of Attorney does not give authority to make decisions about medical or personal care.

Hopefully, that may soon change if the Law Commission recommendations on mental incapacity are implemented. Similarly, an Enduring Power of Attorney does not cover foreign assets, but that too may change for there is a draft Hague Convention on that.

It could be that you may need separate deeds to cover your personal finances, your business affairs and any trusteeship. Unless the contrary as stated, your Attorney will act for you in all

three capacities but a trustee power can last for only a year.

The Attorney must keep an account of what he does for you and that account can be called in for scrutiny by the Court.

We urge all our clients to leave both a Will and an Enduring Power of Attorney in safe custody with us: you never know when either one or the other may be required.

We make no charge for keeping legal documents in safe custody for clients and will supply copies for you to keep at home.

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