

## **POWERS OF ATTORNEY**

*This is only a general background guide. Consult your solicitor for specific advice on your own circumstances.*

You have always been able to delegate management of your business affairs to someone by granting them what is called a Power of Attorney on the basis that you would then supervise how they acted. More recently it has become possible to grant a Power of Attorney that can be used even after you are no longer mentally fit to supervise its use. You do still have to be perfectly capable when you grant the Power of Attorney.

It is also possible to grant what is known as a Welfare Power of Attorney which gives someone the right to give instructions about how you are looked after if you are too poorly to give instructions for that yourself.

A Welfare Attorney is the person who is entitled to give instructions about choice of a Care Home or carers at home. A Welfare Attorney is not allowed to deal with money and property and cannot be paid. A Welfare Attorney can only act if you cannot and always has to take account of your wishes.

There are strict rules about Powers of Attorney. Attorneys cannot use their position to make gifts to themselves. They can only use your money and property to benefit you personally and must keep accounts and receipts. The Government set up a department called the Office of the Public Guardian, based in Falkirk. It provides advice and supervision. It can investigate complaints about how a Power of Attorney is being used. The person who granted the Power of Attorney can complain. If still mentally capable they could simply cancel their Power of Attorney. The Power of Attorney lapses immediately when you die. At that point all your property becomes the business of the Executors appointed under your Will or under the legal rules that apply where there is no Will.

It goes without saying that you have to be careful about choosing an Attorney. Ideally you should have two Attorneys who could deal with business and two who could deal with Welfare. It could be the same people. The Attorneys should agree to be appointed and have to sign a form confirming this.

The procedure requires the Power of Attorney to be drawn up as a formal document listing all the things the attorney can do. A certificate of fitness has to be signed by a doctor or solicitor at the same time that you sign the Power of Attorney. The certificate is a statement that the solicitor or doctor interviewed you before you signed and is of the opinion that you are mentally capable.

As we all have more business and bureaucracy to deal with than in the past, Powers of Attorney are increasingly required. Your next of kin cannot manage your affairs unless they have a valid Power of Attorney. A Power of Attorney are often granted on the basis that, like a house insurance policy, it is hoped it is never needed, but it gives peace of mind knowing that it is in place.