



## Your guide to being an attorney

If you have been appointed to act as an attorney for a relative or friend then that is an important role and it is essential that you are aware of your duties.

**Enduring Power of Attorney** – an EPA would have been made before 2007.

It is not possible to make a new EPA but valid EPAs remain effective.

**Lasting Power of Attorney** – since 2007 you would prepare an LPA.

**Donor** – person who prepared the EPA/LPA.

**Attorney** – person appointed to act under the EPA/LPA

### Duties

Before you take any actions as an attorney you must ensure that you understand the powers that you have and any restrictions, conditions or guidance that have been imposed by the donor.

### Registration

- For an LPA, you need to make sure that it has been registered at the Office of the Public Guardian (OPG) as it cannot be used unless registered.
- EPAs are a little more complex. If the donor of the Power has lost mental capacity to manage their financial affairs then the EPA needs to be registered at the OPG before it can be used. If the donor does have mental capacity then the EPA can be used until such time as they lose mental capacity when it must be registered.

### Decisions

- You must act in the donor's best interests.
- You are not able to override valid decisions made by the donor when they have capacity to make such decisions.
- You must not assume that the donor has lost mental capacity and should help them to make their own decisions when possible.
- You must not mix the donor's funds with your own.
- It is generally best not to make any gifts from the donor's funds unless you have express authority to do so. This authority would either be in the terms of the Power or by application to the Court of Protection.

### Investments

- Ensure any organisation with which you are liaising on behalf of the donor is given a copy of the Power so they are aware of your authority to act.
- Banks and building societies will adjust the donor's accounts to refer to the attorney acting for the donor but accounts remain in the donor's name.



- You may need to file annual tax returns for the donor. You must therefore keep clear records of all transactions.
- You cannot be paid but can recover reasonable expenses.
- You may be called to account for your actions by the donor's executors following their death. That is another reason to keep clear records.

## How we can help

Our aim is to give you peace of mind. Acting as attorney is a big responsibility and having professional help can make things easier and ensure you fulfil your duties correctly. As well as providing advice to attorneys we can also act as attorneys.

For more information about anything in this guide, please contact our Inheritance Protection team.

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