

## **Swayne Johnson Solicitors bring you advice on the new changes in the law relating to Enduring Powers of Attorney**

### **ENDURING POWERS OF ATTORNEY – THE END!**

A change in the law is on its way regarding Enduring Powers of Attorney. As of April this year (2007) it will no longer be possible to create a new Enduring Power of Attorney, you will need to follow a new procedure and draw up a Lasting Power of Attorney.

Although existing arrangements will be allowed to continue, from April 2007 anyone wanting to put control of their money and property into the hands of a trusted family member or friend will have to sign a Lasting Power of Attorney.

At Swayne Johnson Solicitors, we are encouraging all of our Clients to consider this issue before April 2007 and decide whether they would prefer to draw up an Enduring Power of Attorney, while they still have the choice.

Most people are aware of the importance of making a Will and obtaining good advice regarding tax planning in order to preserve their assets for their loved ones. Few are aware that they should consider what might happen if they are no longer able to manage their affairs. Powers of Attorney are a vital part of financial planning.

Under the current law, in order to avoid your family or friends having to make an application to the Court of Protection, it is possible for you to draw up an Enduring Power of Attorney whereby you hand power over your property and money to someone else you trust. The Power can start immediately, or it can be delayed, depending on your particular intentions. Importantly, the Power can continue when you are unable to manage your own financial affairs. In the event that the Donor of the Power becomes mentally incapable, the Attorneys are required to apply to the Court of Protection to register the Power so that they can continue to act on behalf of the Donor.

As a result of the Mental Capacity Act 2005, from April 2007 there will be a new system and Lasting Powers of Attorney will replace Enduring Powers of Attorney.

The Lasting Power of Attorney will come in two forms. The first is completely new and it will cover decisions over health and welfare. The second form deals with property and money, as before.

Unlike Enduring Powers of Attorney, a Lasting Power of Attorney can only be used once it has been registered with the Office of the Public Guardian. Registration will require a fee and, thus, there will be greater expense at the outset in order to get the power up and running. In addition, increased bureaucracy when the Lasting Power of Attorney is completed will have cost implications for clients. In some cases, it is anticipated that the new system could double or treble the cost of appointing an Attorney.

On the other hand, the new Lasting Power of Attorney will be welcomed by anyone who is concerned about entrusting important decisions about care and treatment to the right person.

Attorneys will have the power to decide on issues such as where the Donor will live, their care and medical treatment. They may also give or refuse consent to the carrying out or continuation of medical treatment. However, in some circumstances, Clients will wish to avoid such decisions.

Whether you would prefer to have an Enduring Power of Attorney or Lasting Power of Attorney, what is clear is that it is as important as making your Will as it is a safeguard against potential future events. If you do not have an Enduring Power of Attorney or Lasting Power of Attorney and you lose your mental capacity, your close family and friends will have to make the required application to the Court which will incur both costs and further delay at a time which is already most distressing.

If you would like to appoint someone to deal with your financial affairs only, you should consider making an Enduring Power of Attorney before April 2007, while you still have the choice.

At Swayne Johnson Solicitors, we offer comprehensive advice on both the Enduring Powers of Attorney and Lasting Powers of Attorney. For further information regarding the above or for further information regarding Wills and Inheritance Tax Planning, please contact:-

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**Swayne Johnson Solicitors now have meeting facilities in the village of Tattenhall  
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