

## LASTING POWERS OF ATTORNEY

### THE CERTIFICATE PROVIDER

As an important safeguard against abuse, one of the requirements to validly make a lasting power of attorney is for the document to be signed by an independent person who can confirm that the person ('the donor') making the power:

- Understands its purpose and the scope of the authority it gives to the attorney;
- No fraud or undue pressure is being used to induce the person to make the power; and
- There is nothing else that would prevent the lasting power of attorney from being created.

The choice of a suitable certificate provider is a personal and important decision. There are two types of certificate provider:

- A *knowledge-based certificate provider* who is someone who knows the person making the power personally for the previous two years or
- A *skill-based certificate provider* who has relevant professional skills and expertise.

A skills based certificate provider must be one of the following:

- A registered health care professional, such as a General Practitioner
- A registered social worker
- A barrister, solicitor or advocate
- An Independent Mental Capacity Advocate
- Someone who considers they have the relevant professional skills and expertise to be a certificate provider

A certificate provider cannot be:

- Under 18 years of age
- A member of the either the donor or his attorney's family
- A business partner or paid employee of the donor or attorney(s)
- An attorney appointed in the proposed or another lasting power of attorney or any enduring power of attorney made by the donor
- The owner, director, manager or an employee of a care home in which the donor lives (including care homes with nursing homes) or their family member or partner

The advantage of having a knowledge based certificate provider is that they are unlikely to charge you for this. However, if challenged, they could be called to the Court of Protection to justify their opinion. They would need to show to the Court that they know how to assess capacity under the Mental Capacity Act 2005. If the challenge were successful the LPA would not be valid. A skills based certificate provider would usually charge, but would be expected to have higher skills and expertise than the knowledge based adviser.

Whoever the donor chooses, he should be sure that the person would be able to demonstrate the following:

- Understand what is involved in making a lasting power and its effect;
- Has the skills to assess the donor's understanding of the power and its consequences;
- They can verify that the donor is not acting under the undue pressure of another person, or there are any other reasons that the power should not be created;
- Have detailed knowledge of the donor's financial and personal situation, to be satisfied that there is no fraud involved in the making of the power.

Brachers are members of Solicitors for the Elderly who have been involved in preparing this advice.



### **About Solicitors for the Elderly**

Solicitors for the Elderly (SFE) is a national organisation of lawyers, such as solicitors, barristers and legal executives, committed to providing and promoting high quality legal services for older people, their family and carers. Its members must have a set number of years' experience advising older people and complete an examination before joining as a full or associate member. They must also comply with our Code of Practice, so you can be confident about the service you receive.

Members of Solicitors for the Elderly have undergone specific training on acting as the certificate provider, which added to their experience of working for older and vulnerable adults means that if challenged, they would be able to justify their opinion with fully supported records. This knowledge, with the backing of insurance, provides protection for the donor of a lasting power.

© C Bielanska and Solicitors for the Elderly 2007

For further information about certificate signing please contact the Private Client Department on 01622 690691 or email [info@brachers.co.uk](mailto:info@brachers.co.uk)

