



FAREWELL TO THE ENDURING POWER OF ATTORNEY

The Mental Capacity Act

The Mental Capacity Act 2005 is due to come into effect in April 2007. The Act affects everyone over the age of 16 and provides a statutory framework to empower and protect people who may not be able to make some decisions for themselves, for example, people with dementia, learning disabilities, mental health problems, stroke or head injuries. It makes it clear who can take decisions in which situations and how they should go about this. It will enable people to plan ahead for a time when they lose capacity. The Act covers major decisions about someone's property and affairs, healthcare treatment, where the person lives, as well as everyday decisions about personal care in all cases where the person lacks capacity to make the decisions themselves.

The Enduring Power of Attorney (EPA) will be replaced by the Lasting Power of Attorney (LPA). It will be similar to the EPA in that a person can delegate control of his property and affairs but it will also allow health and welfare decisions to be made. Unlike EPAs, LPAs **MUST** be registered with the Office of the

Public Guardian immediately they are made.

No one knows what the new form of the LPA will look like as the public consultation process has only just finished. We would have thought it unlikely that the new forms and guidance would be produced until well into the New Year. What seems certain is that LPAs will be more expensive to produce than EPAs and a registration fee (at present not known) will also have to be paid.

So far as EPAs are concerned:

- a. all EPAs made and signed before April 2007 remain valid and will not have to be registered until the donor loses capacity.
- b. It is not possible to make an EPA after the end of March 2007.

Create an EPA while there is still time

Because of the enormous amount of uncertainty surrounding the new forms and what may well be considerable extra expense in producing and registering them, our recommendation is that if you are considering making plans for a time when you may no longer be in a position to manage your finances yourself that you delay no further and create an EPA now.



Merry Christmas

Sue and Andy would like to wish you all a merry Christmas and a happy and prosperous 2007.