

POWER OF ATTORNEY IN GUERNSEY

This article describes the procedure for giving a power of attorney other than a Lasting Power of Attorney (for which, see separate article). The type of power described here will become ineffective if the person giving the power loses capacity for physical or mental causes.

A Power of Attorney may be given where a person wishing to make a transaction is unable to be present physically and wishes another person to represent them to e.g. consent to a conveyance, appear as a member of the Family Council in an application for guardianship, sign a contract or indeed to do anything which the donor, who must at all stages have capacity, authorises the attorney to do.

Whether a person has capacity to give a POA depends on their state of mind at the time the POA is executed. If a doctor expresses the opinion that a patient is incapable of managing his/her own affairs, that person will be incapable of giving a POA. In such a case, in order for another person to manage that person's affairs it will be necessary to make an application to the Royal Court for the appointment of a **Guardian** (see separate article).

If, on the other hand, the person is elderly or physically handicapped but is of sound mind, he/she may execute a POA, if necessary at home or in hospital etc by arrangement with an advocate or notary; and as long as the person retains mental capacity his/her attorney can carry out his/her instructions using the authority of the POA. (In such a situation consideration might also be given to executing a Lasting Power of Attorney which may be used immediately upon registration for financial and property decisions and would then be available should the person subsequently become incapacitated.)

The Power of Attorney should be executed before an Advocate of 5 years standing or a notary public. There is no tariff of fees and enquiries as to the likely cost should be made when making an appointment.

If a donor wishes to revoke a power of attorney, either the donor must destroy the original document or, if that is not possible, apply to an advocate to get a document drawn up revoking the POA.

NB All relevant parties (e.g., banks) will have to be informed that the POA has been cancelled and the person who had been given POA is no longer representing the wishes of the client.