

## \* Accounts for attorneys

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### Your responsibilities as an attorney under a Property and Affairs Lasting Power of Attorney (LPA) or registered Enduring Power of Attorney (EPA)

Your appointment as an attorney under a Property and Affairs LPA or EPA carries with it a number of responsibilities of which the over-riding one is that you should always act in the best interests of the donor. Your position as attorney is governed by the Mental Capacity Act 2005 and its accompanying Code of Practice which sets out your powers, responsibilities and obligations.

If you are appointed as an attorney under a Property and Affairs LPA or EPA then under the Code of Practice, as part of acting in the donor's best interests, you are required to keep the donor's money and investments separate from your own, and to produce Accounts showing how you have dealt with his or her assets. Although this requirement is imposed in order to protect the donor, it could also be considered to be protective of the attorney, in that if you have up-to-date Accounts it is much easier to show that you have been complying with your obligations to deal with the donor's property to benefit him or her and in a way that is in their best interests.

#### Keeping property separate

This means that you must not mix up the donor's property with your own. So you should not, for example, combine the balance on your savings account with the donor's savings account in order to gain a better rate of interest for you both. The donor's separate accounts should be maintained or, if it is necessary to change them on investment grounds, the new investments should also be in the donor's name.

You should ensure that all receipts and payments relating to the donor's finances go through his or her account and there is no inter-mixing of funds. For example, if you are buying clothes for the donor it would be preferable if this payment came direct from the donor's Bank account rather than you funding the purchase and later being refunded. Any income due to the donor, for example, pensions should be paid into the donor's account and then used to fund outgoings from this source. This will ensure that you have met your obligations and make preparation of Accounts much easier.

Remember that as attorney your ability to make gifts of any kind from the donor's property is severely limited without the consent of the Court of Protection.

#### The form of Accounts

The Code of Practice does not specify what form the Accounts should take, other than stating that if the donor's affairs are straightforward a simple record of receipts and payments should be sufficient. If there was no LPA/EPA in place then, in order to manage the donor's finances you would need to be appointed as a Deputy by the Court of Protection. As such you would have to make a return to the Court each year which incorporates Accounts in a form prescribed by the Court. It would therefore seem sensible to use this form also for Accounts kept by an attorney. Such Accounts would be compliant with the Mental Capacity Act and, if the Court were ever to ask for sight of them, they would be in a form familiar to the Court.

The Court of Protection prescribed form sets out a summary of income and expenditure on a receipts and payments basis breaking this down between each account in the donor's name and with a balancing exercise at the end.

### What if you do not wish to draw up Accounts?

You may not have sufficient time to deal with the Accounts yourself or feel that you do not have the necessary skills. If so, it is acceptable for you to appoint professionals to carry out this task on your behalf and the fees incurred are payable by the donor. We have extensive experience of preparing Mental Capacity Act compliant Accounts for both attorneys and Deputies and would be happy to help you deal with your accounting obligations, or to advise you on your duties as attorney, if you would like to contact us.

### Further information

For further information on this or on any other Private Capital matter you may have, please contact us via: [\[AC\\*01\]](#)

See key contacts

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