



Private Client Law Bulletin

GIFTS BY ATTORNEYS

An Attorney acting under an Enduring Power of Attorney ("EPA") whether registered or unregistered has limited authority to make gifts. There are 3 conditions to be satisfied before any gift made by an Attorney can be said to be valid and can be made without obtaining consent from the Court of Protection:-

1. There must be no prohibitive restrictions in the EPA itself.
2. The gift must be of a seasonal nature or on an anniversary of a birth or marriage to persons who are related to or connected to the Donor. Gifts to charity are also accepted.
3. The value of the gift must not be unreasonable particularly bearing in mind the size of the Donor's estate.

If the EPA is registered and the Attorney proposes to make a more extensive gift of the Donor's property, possibly as part of a tax mitigation exercise, an application should be made to the Court of Protection under Section 8(2)(e) of the Enduring Power of Attorney Act 1985. It is probably best practice, especially for a professional Attorney, to at least consider such action. To proceed, a general form of application to the Public Guardianship Office is required with medical evidence of the Donor's medical incapacity and an Affidavit evidencing the following:-

1. Details of the Donor's family by way of a family tree.
2. Particulars of the Donor's current assets, income and outgoings and effects of proposals on these.
3. Statement of the Donor's needs - both current and anticipated.
4. A clear explanation of the instances of Capital Gains and income tax liabilities as a result of the proposals.

The official solicitor is appointed by the Court to act for the Donor and a hearing date is set. However, in straightforward tax planning cases the official solicitor will dispense with the need for the hearing and a Court Order is made authorising the receiver to make the gifts.

If you would like an informal chat or require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact the Liverpool office on 0151 600 3451 or the Manchester office on 0161 836 8800.

If you no longer wish to receive these bulletins, please contact the Marketing Team on 0151 600 3032

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