



## FHPA

### POWERS OF ATTORNEY

The Conveyancing Committee receives many queries as to whether it is safe to accept the completion of a consent under the Family Home Protection Act executed by an agent on foot of a Power of Attorney. The Committee is satisfied that a person can execute any document on foot of an appropriate Power of Attorney as fully and effectively as the grantor of the Power of Attorney could execute it himself. This clearly includes the execution of a consent under the Family Home Protection Act. Ideally the form of Power of Attorney should be specifically drafted to include reference to the giving of a consent for a specific transaction although, clearly, a properly drafted general Power of Attorney would be adequate. As in relation to all Powers of Attorney the Committee repeats its warning to make the giving of the consent a principal power under the Power of Attorney and not an ancillary one.

Solicitors should also think twice before agreeing to accept an appointment under a Power of Attorney to give a consent unless they have the clearest possible instructions - preferably in writing. Again, Solicitors should take care lest they owe a duty of care to a consenting spouse to advise on the general wisdom of appointing the agent which is something that would need to be carefully considered in any case. It is really no different from appointing any agent under a Power of Attorney to execute a deed and it is obviously a particular type of agency that should not be given lightly.

People sometimes believe that an agent acting on foot of a Power of Attorney who clearly has power to execute the consent can also complete a declaration to verify the facts regarding a marriage etc. under the Family Home Protection Act. Such evidence would be worthless being hearsay. An agent cannot give evidence on behalf of another either in court or by way of declaration. The agent could only execute the declaration if he or she is doing so of his or her own knowledge and in such event is not doing so on foot of the Power of Attorney.

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## STAMP DUTY ON MEMORIALS

Practitioners are reminded that there are two distinct circumstances which arise in relation to Stamp Duty on Memorials arising from the provisions of the following Acts:-

1. **Section 14 Family Home Protection Act, 1976**

An assurance of a Family Home by one spouse into the joint names of both spouses is exempt from Stamp Duty.

A Memorial of the Deed of Assurance is also exempt from Stamp Duty.

2. **Section 114 Finance Act, 1990**

(a) An assurance by one spouse which has the effect of placing a family home into the sole name of the other spouse is exempt from Stamp Duty.

(b) An assurance between spouses of a property which is not a Family Home is exempt from Stamp Duty.

However, Memorials of these assurances are liable to Stamp Duty.

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