

ENDURING POWER OF ATTORNEY

Any person may become incapable of managing their own affairs at any stage in life. An accident, ill health or mental illness may make the everyday routines of paying bills and making financial decisions difficult and stressful, and in many cases, impossible. When a person becomes incapable of managing one's affairs it can be a difficult time both for oneself personally and more importantly one's family and close friends. From both a practical and financial point of view it makes sense to consider appointing an attorney under what is termed an "enduring power of attorney", should that day arrive.

The person creating the enduring power of attorney is known as the "donor" and the person appointed is known as the "attorney".

In planning ahead and making an enduring power of attorney, you are able to give your instructions whilst you are of sound mind, in anticipation of the possibility of not being capable at some future date to manage your affairs as you would otherwise wish. Obviously, it is difficult to contemplate ever losing the ability to manage one's affairs. An enduring power of attorney can ensure that if this should happen, your financial affairs, in addition to other personal and property issues, would be looked after by someone you yourself have chosen and is trusted by you. The completion of an enduring power of attorney does not restrict your right to go on looking after your own affairs for as long as you are capable. The appointment of an attorney simply means that there is someone to take over if and when you cannot cope. If you wish, you can restrict the scope of the enduring power of attorney by giving your attorney a specific authority to do only certain things on your behalf. In making your choice of attorney you need to be mindful and aware of the responsibility you will be placing on your attorney's shoulders. Obviously, it would be advisable if you wish to appoint a member of your family or a close friend to discuss beforehand if they are willing to act and what exactly you require of them.

What can my attorney do? – Basically your attorney can do almost anything you could do yourself unless you restrict his or her authority specifically on creating the enduring power of attorney. The attorney is legally empowered to act and perform the necessary legal and business functions on behalf of the donor. The attorney can, for an example,

- Dispose of property.
- Deal with your entire financial affairs to include the signing of cheques or withdrawing money from your Bank, Building Society or Post Office Account.

- Sign all documents on your behalf.
- Make purchases on your behalf.
- Make gifts to your family, friends or a charity provided they are gifts which you might have been likely to make yourself, for an example birthday and Christmas gifts.
- Arrange for your care, maintenance and medical attention and give the necessary instructions and make the appropriate payments.
- Apply for nursing home subvention on your behalf.

You may appoint more than one attorney, although more than two is unusual and might ultimately prove to be unworkable and lead to practical difficulties. You may give your attorneys power to act jointly or in the alternative, independently of each other. It is also open to you to appoint a substitute attorney should your first choice of attorney die or be unable or unwilling to act.

The procedure to create an enduring power of attorney is relatively straightforward. The document creating the power must be in a particular format and must be completed by a Doctor to certify mental competence, a Solicitor to certify the donor's understanding of creating the enduring power of attorney, by the donor stating that they understand the effect of entering into such a legal arrangement and by the attorney(s) to acknowledge acceptance of their duties and responsibilities. Notice of the creation of an enduring power of attorney is required to be given to at least two persons who are known as the notice parties. Neither of the notice parties can be the attorney. At least one must be the spouse or if the donor is unmarried, widowed or separated, notification must be given to a child. If neither applies in the circumstances, then any relative may fill the role of the notice party.

When the person you have appointed as your attorney becomes aware that you have lost, or are losing the mental ability to manage your affairs, steps must then be taken to register the enduring power of attorney. The enduring power of attorney only comes into operation when registered. To register the power, the attorney must make an application to Court once there is a reason to believe that the donor is becoming mentally incapable. The Court has an extensive supervisory role in relation to enduring powers of attorney. Certain formalities require to be adhered to which include the necessity to obtain a certificate from a registered medical practitioner to the effect that the donor is, or where appropriate, is becoming, incapable by reason of a mental condition of managing and administering his or her property and affairs. In addition, both the donor and the notice parties must be served with notice of the attorney's intention to apply for registration. The purpose of serving the notice on the donor and the notice parties is to protect the donor's interests. For example, the donor may not believe they are incapable. It is also open to the notice parties to make objections to the Court in advance of registration if they, for example, feel that the attorney may have secured their appointment by fraud, undue influence or other inappropriate means.

In circumstances where a person becomes incapable of managing their affairs by virtue of a mental illness and in the absence of an enduring power of attorney it may

become necessary to make that person a Ward of Court. The principal purpose of Wardship is to protect the property of the Ward and to manage it for his or her benefit or the benefit of any dependents. Wardship applications are heard by the High Court and after the President of the High Court has made an order bringing a person into Wardship, he appoints a Committee to act on behalf of the Ward and gives directions to bring the Ward's assets under the control of the Court and make them available for the Ward's maintenance and benefit. The clear difference between the Wards of Court procedure and that of the enduring power of attorney is that in the latter you decide who looks after your affairs - if you are made a Ward of Court, the person appointed to look after your affairs may be someone you would not have chosen.

Planning Ahead – As a nation we are living longer than ever before. The inability to manage one's affairs can befall anybody at any age. Most people are aware of the necessity to make a Will but given that we are also now a wealthier nation it makes sense to give consideration to creating an enduring power of attorney. Family and friends do not automatically have the right to take over your affairs once you lose the ability to manage them yourself for whatever reason. If you have already made a Will then an enduring power of attorney will complement this and help to reassure both you and your family that you have made detailed plans for whatever the future may hold.

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