

Enduring Powers of Attorney

Do you have one?

Have you considered what you want to happen if you lose the ability to do things for yourself? Many people assume that enduring powers of attorney are only important for the elderly, but what would happen to you if you had a sudden accident or medical emergency which left you temporarily or permanently unable to make decisions for yourself?

Everyone knows they ought to have a will but many people do not consider other situations which may arise. It is important that every person puts in place enduring powers of attorney in relation to both property and personal care and welfare, to prevent difficulties in the future.

What is a Power of Attorney?

A power of attorney is a formal document where one person (the “donor”) gives authority for another person (the “attorney”) to act in their name. It can only be made when a person is mentally capable and understands what they are doing.

An ‘ordinary’ power of attorney is valid until the person who makes it dies, becomes bankrupt or becomes mentally incapable. It is commonly used for temporary purposes, such as when a person goes overseas and wants someone at home to be able to deal with their affairs.

An enduring power of attorney (EPA) ‘endures’ and has effect after someone loses their mental capacity, allowing the attorney to continue to act on their behalf. There are two types of EPA:

- An EPA in relation to personal care and welfare gives the attorney the power to make legal decisions about your care and welfare (e.g. where you should live, what medical treatment you may require).
- An EPA in relation to property gives the attorney the power to act in respect of your property, which can include land, bank accounts, income, shares, insurance policies etc.

Why do I need one?

Many people assume that if they lose the capacity to make decisions about their needs, their next of kin, partner, child or parent can automatically make those

decisions for them. This is not correct. Without an EPA, institutions such as banks, insurance companies and power companies, will be reluctant to deal with any person other than the account holder.

Where someone loses capacity and needs long term decisions made for them, hospitals and retirement homes will require someone to be appointed to make decisions.

If you do not have EPAs and you suddenly become very ill or have a serious accident and cannot make decisions for yourself, your family will be forced to apply to the Family Court to have a person appointed by the Court. This takes time and costs money but can be avoided by planning ahead.

Planning for your future

EPAs are simply a tools to help you plan your future should anything happen to you. It does not mean you are giving away your rights or your ability to make decisions for yourself. You are able to put in place boundaries and restrictions and you can choose who you wish to deal with your affairs and they must always act in your best interests. You can even require your attorney to consult with, and provide information to, other people in your family. What it means, is that should something happen to you, it’s easier for your family and friends to help you and make sure your affairs are in order.

If your situation changes, you are able to revoke your EPA at any time, provided you still have the ‘capacity’ to do this.

How can we help?

The law around EPAs changed in 2008, bringing with it new restrictions on what donors, attorneys and their lawyers can do. Existing enduring powers of attorney remain effective and valid but there may be further implications of the law change that your attorney doesn’t know about. If you wish to make EPAs, you are now required to obtain independent legal advice.

We are experienced in dealing with all aspects of life and estate planning, including wills, enduring powers of attorney, relationship property agreements and trusts. If you would like to know more, please contact our Personal Planning and Business Solutions Team.