



Preparing for the Future – Enduring Power of Attorney

Introduction

If we had a crystal ball and could see in to the future wouldn't it be wonderful – we could plan and manage our businesses and personal affairs accordingly. Unfortunately none of us can predict what is around the corner and so the importance of having the right person in the wings with the legal authority to act on your behalf, if you are not in a position to do so yourself, cannot not be understated.

What is an Enduring Power of Attorney?

If someone becomes incapacitated through disability, illness or a progressive degenerative disease their assets become frozen. To avoid this situation a person, while in good health, should create an Enduring Power of Attorney (EPA). This a legal document which only takes effect in the event that that person becomes mentally incapacitated. The person creating the EPA is known as the Donor and in the event of his/her incapacity power to deal with the Donor's money and assets transfers to the Attorney.

The Donor is not prevented from dealing with his/ her money and assets by creating the EPA, this only happens if the Donor becomes mentally incapacitated.

Powers

An EPA can be very specific, e.g. give the Attorney a particular task to carry out like the sale of property or management of bank accounts. The other type of EPA would be very general and virtually entitle the Attorney to do everything that you would do yourself, with your money and property. Importantly this second type of EPA will also enable your Attorney to make “personal care” decisions e.g. where the Donor lives, whom he should see and not see, diet and dress.

Who can be appointed as Attorney?

You can appoint anyone you wish to act as your Attorney e.g. spouse, family member or a friend. You can also appoint more than one person. The choice of Attorney is a personal matter but a good deal of thought needs to be given to the nomination. You need to ask yourself is this person suitable for the job? Are they trustworthy and do they have the skills to manage my affairs and make decisions for me?

