

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, 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 mental 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 their incapacity power to deal with the Donor's affairs transfers to the Attorney.

The Donor is not prevented from dealing with their money and assets by creating the EPA, this only happens if the Donor becomes 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.

Another 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.

And, there are many variations in between.

WHO CAN BE APPOINTED AS ATTORNEY?

You can appoint anyone you wish to act as your Attorney – your spouse, a family member or a friend. You can also appoint more than one person. You can specify that they must act together - decisions must be made jointly or, alternatively, it can be specified that they act jointly where they can act together, but decisions can also be made by one Attorney.

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?

If you have made a decision to appoint one family member you can specify that others have to be consulted about what would be best for you and what your wishes might have been had you been able to make decisions. You can also select an alternative Attorney in case your first choice is unwilling or unable to act.

WHAT IS THE PROCEDURE FOR CREATING AN EPA?

The procedure for the creation of an EPA is complex.

You will have to consult your Solicitor and your Doctor.

Your Solicitor will prepare the documents for you after consultation with you. You will need to decide whether a specific or general Power of Attorney is more suited to your needs.

The paperwork that needs to be completed in order for the Power of Attorney to be valid are:

- A statement from your Solicitor that you understood the effect of creating the Power of Attorney
- A statement from your doctor confirming that you had mental capacity to understand the effect of creating the Power of Attorney
- A statement from you that you understood the effect of creating the power

The process also requires your Solicitor to notify two family members that you have made the Power of Attorney.

WHAT HAPPENS IF I CHANGE MY MIND?

The EPA can be revoked at any time before it is registered. If you change your mind about having an EPA or about your choice of Attorney you should consult your Solicitor immediately.

Your Solicitor will advise on the process of revocation of the EPA.

REGISTRATION OF THE EPA

The Attorney must apply to the High Court for registration of the EPA if the Donor becomes mentally incapacitated.

The Court will require the production of medical evidence of the Donor's incapacity. Notice of the application to register the EPA must also be served on the Donor and the same two persons that were notified of the creation of the EPA.

Once the EPA is registered the Attorney can lawfully act on the Donor's behalf.

An Enduring Power of Attorney is as important as your Will.

The Enduring Power of Attorney will prevent a situation arising where money assets become frozen as friends and family members struggle to cope with the stresses and demands that illness sometimes create.

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