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## INTRODUCTION

If we had a crystal ball and could see into 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.

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## 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 is 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, can give full or limited power to manage all or some of a Donor's property and affairs (including personal welfare).

The Donor is not prevented from dealing with his/her money and assets by creating the EPA, this only happens **if** the Donor lacks capacity to make decisions on the matters set out in the EPA and the EPA is registered with the Decision Support Service.

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## 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/she should see and not see, diet and dress and so on.

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## 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? There is a statutory mechanism to oblige your Attorney to be answerable to both the Courts and the Decision Support Service when carrying out their duties under the EPA.

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## WHAT IS THE PROCEDURE FOR CREATING AN EPA?

The procedure for the creation of an EPA can be complex. You will have to consult your Solicitor and satisfy your Doctor and a Healthcare Professional that you have capacity to create the EPA. Your Solicitor will prepare the documents for you after consultation with you and deciding whether a specific or general Power of Attorney is more suited to your needs.

Amongst 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 and health care professional 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.
- A statement from the Attorney that they understand the implications of the responsibility that they will be taking on.

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

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## 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.

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## REGISTRATION OF THE EPA

The Attorney must apply to the Director of the Decision Support Service for registration of the EPA if the Donor becomes mentally incapacitated. The Director will require him/her to produce evidence of the Donor's incapacity and 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, but many people place more emphasis on the latter. The Enduring Power of Attorney will prevent a situation arising where financial assets become frozen as friends and family members struggle to cope with the stresses and demands that the Donor's illness will foist upon them.

## FOR MORE INFORMATION

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## ATTENTION

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