

# ENDURING POWERS OF ATTORNEY

Everyone should have an Enduring Power of Attorney (EPA).

A traditional Power of Attorney gives your Attorney the power to deal with your affairs but it ceases to operate if you then suffer from mental incapacity. An Enduring Power of Attorney is not revoked if you subsequently lose mental capacity.

**Consider this:** John was on the way home and had a car accident. He is now in hospital in a coma and unable to move a muscle. His affairs are at a standstill and he is unable to do anything about it. Someone will have to apply to the Court for an Order to manage his affairs. It will cost thousands. This could have been avoided if he had given an Enduring Power of Attorney.

There is a misconception that EPA's are only for the elderly, but if you have a sudden accident or illness, your opportunity to choose who will look after your affairs may be gone, perhaps even permanently. Think of the worry for those close to you in trying to decide what is best for you and what you might have wanted. We recommend that everybody should have an Enduring Power of Attorney.

An Enduring Power of Attorney is a legal document that lets you appoint a person or persons to take care of your affairs. There are two types of EPA:

## 1. EPA in Relation to Property

- (a) You can appoint one or more Attorneys.
- (b) The Property EPA can be stated to come into effect immediately and to remain effective should you become mentally incapable. Alternatively it can be stated to come into effect only when you are no longer able to look after your own affairs.
- (c) The Property EPA can be general or only in respect of certain matters, which needs to be stipulated. It can also be in relation to the whole of the Donor's property or in relation to certain specific property only, which again needs to be listed. The Donor can also add any conditions and restrictions.

## 2. EPA in Relation to Personal Care and Welfare

- (a) Only one Attorney can be appointed.
- (b) The Personal Care and Welfare EPA will only come into effect if the Donor becomes mentally incapable.
- (c) The EPA can be stated to be in relation to the Donor's personal care and welfare general or it can be in relation to specific matters which need to be stated. It can also be stated to be subject to conditions and restrictions, which again need to be stated.

Brief legal requirements for EPAs:

- (a) An EPA must be in the form set out in the Protection of Personal and Property Rights Act 1988.

- (b) You must sign the EPA before a solicitor or a legal executive.
- (c) The Attorney must sign the EPA before a witness other than yourself and other than the person who witnessed your signature.
- (d) The Attorney must be aged at least 20, and be a person who is not bankrupt or subject to Orders under the Protection of Personal and Property Rights Act.
- (e) You must be mentally capable at the time of signing the EPA. If you are already mentally incapable it is too late.

Before anyone can properly manage your property, they will need to know what you own, where everything is kept and what you want to happen.

You will need to list all your main assets, including your house, bank accounts, life insurance policies, investments, vehicles, furniture or jewellery and money owed to you.

Then list your liabilities and financial commitments.

Next you will need to tell us where you keep your life insurance policies, share certificates and title deeds. If you wish, these can be put in our custody for safe-keeping.

You will also need to decide what things you might wish your Attorney to do on your behalf. These can be as limited or as wide as you choose; they can even include the power to make gifts in circumstances where you would have if you had been able.

One of the most important decisions when making your EPA is choosing your Attorney. Your Attorney may be responsible for managing your affairs until you die.

First your Attorney should have an understanding and care for you and your affairs. Ask yourself, *"Will my Attorney have the skills and time to manage my affairs, as well as their own? Will they realise their obligations to keep proper records and keep full accounts, and be willing and able to do so?"*

Your Attorney should also have a working knowledge of business and financial matters if possible and if applicable to your situation.

Confused records or accounts create problems for everyone; not the least the Attorney who may be personally liable to put things right.

You may choose a member of your family, a friend or business partner. Or you may prefer a professional, such as a lawyer. You may choose to have two Attorneys, one a family member and the other your lawyer.

An EPA has no direct bearing on your Will, unless you allow your Attorney the power to amend your Will or make a new Will for you.