

IS MY ATTORNEY PAID FOR WORK UNDERTAKEN?

It is normal practice for a professional Attorney, such as a solicitor or accountant to be paid for professional services provided. Otherwise Attorneys can only recover out of pocket expenses, unless otherwise authorised by Court. The legal costs involved in the registration of an EPA, and any legal work undertaken on your behalf, would be a legitimate expense for your Attorney to recover from your assets.

CAN I CHANGE MY MIND AND REVOKE AN EPA?

Yes. You can revoke an EPA while you remain mentally capable and your EPA has not been used. You should give notice of revocation to your Attorney. Once an EPA has been registered, it can only be revoked by the High Court.

IF I RECOVER MY CAPACITY, WHO IS IN CHARGE OF MY AFFAIRS?

There is a procedure to de-register the EPA which will allow you to resume control yourself. Your solicitor can guide you on this process.

IS IT EXPENSIVE TO MAKE AN EPA?

No. Legal costs are modest as the paperwork is not complicated once the important decisions have been made with professional help. It would be much more expensive NOT to have an EPA should you have the misfortune to lose your capacity. Ask your solicitor for an estimate of the cost in drawing up the paperwork.

This leaflet is intended to give an overview of issues to be considered in relation to Enduring Powers of Attorney. It is a general guide only and you are strongly recommended to discuss your personal circumstances with your solicitor who will guide you through the decisions and choices to be made.



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Enduring Powers of Attorney



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We all assume that somehow we will be able to manage our property and financial affairs throughout our lives. However, this does depend on having the mental capacity to understand our various transactions and their implications. Equally, we sometimes assume that we will always be physically able, for example to visit our bank.

These abilities may be unexpectedly lost through accident, injury or the on-set of illness such as dementia, so it is reassuring to know that there are procedures in place that can help you plan for the future. You can plan for these possibilities by taking the sensible precaution of executing an Enduring Power of Attorney (EPA) whilst still mentally capable.

WHAT IS AN EPA?

An Enduring Power of Attorney is a Deed by which one person (the "Donor") authorises another person (the "Attorney") to act on his or her behalf in relation to all, or specified property and financial matters. This delegated authority will continue if the Donor loses mental capacity.

DO I LOSE CONTROL WHEN I SIGN AN EPA?

You are potentially sharing control with your Attorney. You can state the EPA is not to come into operation unless you become mentally incapable. Some prefer to make this stipulation. Others choose not to, as they wish their EPA to be effective if they become physically incapacitated and unable to manage their banking etc, yet remain mentally capable. This is an important choice which should be carefully considered with your solicitor.

IS THIS JUST A NOTE OF MY WISHES?

No. A specific form must be used to nominate your Attorney, and signed by both the Donor and Attorney in the presence of witnesses.

DO I NEED AN EPA IF I HAVE A WILL?

Yes. Your Will is only relevant after your death. An Enduring Power of Attorney deals with the management of your property and finances when you are alive, but unwell.

IF I DON'T HAVE INVESTMENTS OR PROPERTY IS THERE ANY POINT?

Yes, someone will need to manage your Pension or Benefits when you cannot. This will be easier with an EPA in place.

WHAT IF ALL MY ASSETS ARE JOINTLY OWNED?

If it becomes necessary for a jointly owned house to be sold, only a person with authority (such as an Attorney) can sign on your behalf. One joint owner cannot sign deeds for all co-owners. Often joint bank accounts are frozen if a bank becomes concerned that one party is no longer capable, and no EPA is in place. This can cause cash flow problems for all the account holders.

CAN I HAVE MORE THAN ONE ATTORNEY?

Yes. It is often practical to have more than one Attorney. If so you must decide whether they can act independently of each other or must always act together. This choice is not entirely straightforward, and there are important implications which your solicitor will be able to guide you through.

WHO SHOULD I APPOINT AS MY ATTORNEY?

Someone you trust completely, whether a family member, friend or professional advisor. An EPA gives your Attorney complete control of your property and finances (unless restricted) and you must be confident your Attorney will have your best interests at heart. Be sure to discuss your intentions with any Attorney you

intend to appoint, as an Attorney must accept such an appointment and sign the EPA form, after you.

WHAT POWER DOES AN ATTORNEY HAVE?

Subject to the terms of the particular EPA, an Attorney has wide authority to stand in the Donor's shoes and make all decisions about the Donor's property, income and finances, which the Donor could have made, with a few exceptions. An Attorney cannot make a will for the Donor, sign an affidavit, or perform any act which the Donor was authorised to do because of personal appointment, personal skill or a statutory direction.

CAN MY ATTORNEY MAKE MEDICAL DECISIONS FOR ME?

No. Your Attorney has no power to make medical or personal welfare decisions for you.

WHAT RESPONSIBILITIES DOES MY ATTORNEY HAVE?

At all times your Attorney must act in your best interests. Your Attorney must apply to register the EPA with the High Court, through the Office of Care and Protection, if you have become or you are becoming mentally incapable of managing your financial affairs. During the registration process the authority given to your Attorney is effectively "on hold" until the process has been completed and the original Deed is issued bearing the court registration stamp.

WILL I KNOW IF MY ATTORNEY HAS APPLIED TO REGISTER MY EPA?

Your Attorney is obliged to give you formal notice if steps are being taken to register your EPA. As an added protection your Attorney is also obliged to give notice to a number of your next of kin. You, or family members notified can lodge an objection with the Office of Care and Protection, if it is considered the registration is inappropriate.