

ENDURING POWERS OF ATTORNEY

What is an enduring power of attorney?

An enduring power of attorney is a document giving authority to someone else (the attorney) to make decisions on your behalf if you are no longer capable of making them for yourself. Such circumstances may arise from you suffering an illness, accident or other unfortunate event. The decisions which an attorney can be authorised to make include decisions about financial matters (e.g. dealing with your money or other assets) and personal/health matters (e.g. consenting to certain medical treatment or procedures). It is separate and distinct from a will which is of no effect until you die. On the other hand an enduring power of attorney automatically ceases to have effect when you die. An enduring power of attorney can also be changed or cancelled by you at any time as long as you are still capable of making your own decisions.

Why give someone enduring power of attorney?

None of us know what may happen to us in the future. In this regard an enduring power of attorney is similar to insurance. You hope that it never has to be used but you make sure it is there just in case it is needed one day. People often ask whether a spouse or next of kin can make decisions for an incapacitated person even without an enduring power of attorney. In past times this was generally the case. However in our twenty-first century world (where concern over being sued is much greater than it used to be) those in banks, hospitals, etc are much less likely to do so and often will not accept the authority of a spouse or next of kin without an enduring power of attorney.

Who should I appoint as my attorney?

Someone you trust to make the right decisions for you. Typically it is a close family member and often the same person you appoint as the executor under your will. You can have more than one attorney and it is usually best to have at least one "back-up" person to be the alternative attorney in case something happens to your first choice. For instance, couples often appoint each other as their attorneys but if the other cannot do it (e.g. the couple are in a car accident together) then a third person is nominated as the attorney in those circumstances. You can also have more than one attorney at the same time, however in that case you have to specify how they are to make decisions (e.g. unanimously or by majority if there are three attorneys). It is even possible to appoint one person as your attorney for financial matters and another person as your attorney for personal/health matters.

How do I give someone enduring power of attorney?

The state government has issued a form which must be used for the appointment of attorneys. The form has to be completed, then signed by yourself and a witnessing lawyer, justice of the peace or commissioner for declarations. It is best to engage a lawyer to assist you with completion of the forms and witnessing your signature. That way you can obtain the legal advice you need to ensure the forms are completed in such a way as to give effect to your wishes. The form also has to be signed by the attorney(s) to confirm acceptance of the appointment. However no witness is required to the signature of the attorney(s).

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