

ENDURING POWER OF ATTORNEY

YOUR COMPLETE GUIDE



Trust our Experience

James
McNulty & Co.
S O L I C I T O R S

Tel: (028) 8224 2177 (028) 8224 5695

Est 1931

www.jamesmcnulty.co.uk

We all assume that somehow, we will be able to manage our property and financial affairs throughout our lives. However, this does depend on us 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, accountant or solicitor.

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

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 NEED AN EPA IF I ALREADY HAVE A WILL?

Yes. Your Will is only relevant after your death. Everyone should have an Enduring Power of Attorney, along with a Will. An Enduring Power of Attorney deals with the management of your property and finances when you are alive, but mentally incapable. In setting up an EPA you appoint people to act as your attorney to look after your affairs if you become unable to.

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. A letter of wishes is something which you can place with your Will as a guide to your executors on funeral arrangements, funeral music, distribution of personal and household belongings, personal statements of affection, advice to guardians on how you would like your children raised, their religious upbringing, education, where to live and provide an explanation as to why you have included or excluded someone from your will if you think it may be challenged later- it should be signed but not witnessed.

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.

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 a very important choice which should be carefully considered with us.

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 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. However 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; we can guide you on this process.

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.

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 SKILLS DO THEY NEED?

If your attorneys need to step in to handle your finances and make decisions when you are unable to, you will want to ensure they are competent to do so. The skills required will depend on the complexity of your investments. Are there investment properties to manage which require knowledge of the responsibilities of a landlord? If all your finances are online, they will need digital skills. Do you need someone confident and assertive to argue for particular Nursing Home arrangements?

DO THEY KNOW YOUR WISHES?

A key issue to consider when choosing your attorneys is - do they know and understand your wishes. This could be your preferences concerning how your religious or ethical beliefs impact your decisions and personal preferences regarding lifestyle if in residential care.

SHOULD I APPOINT A CLOSE RELATIVE?

It is common to appoint close family members as attorneys as they probably know you best, but this is not always ideal in practice. Your closest relatives may not always agree with you on all issues and they may not see eye to eye when a major decision needs to be made. You need to be sure they will make decisions in your best interests.

AGE AND HEALTH

If you are inclined to appoint your spouse or partner who is a similar age to you, or has their own health issues, you need to think particularly carefully. Unless they are a lot younger than you, will they be well enough to act as your attorney when the need arises?

COULD I APPOINT A FRIEND?

Your attorneys do not have to be family; you may prefer to appoint a close friend who knows and understands you better than any relative. A key issue to consider is whether you are confident you have known your friend long enough to trust them with making important decisions; would you have peace of mind if they were looking after your affairs?

LOCATION

Ideally, your attorneys should be local to you so that they can visit you easily to discuss issues and decisions for as long as you are able. They will also have easier access to your property etc.

CAN YOU TRUST THEM?

Whoever you choose, your attorney must have your absolute trust because they will have to follow your instructions and respect any preferences you include in the enduring power of attorney. The law also requires your attorneys to help you make your own decisions as much as you are able to at the relevant time. You should think about whether your potential attorneys know you well enough to understand and empathise with your needs and wishes.

DO THEY WANT THE RESPONSIBILITY?

You may think you have the perfect attorney in mind, but they may feel they will not have the time, skills or energy to commit to the role; or they may simply not want the responsibility. Do not forget to ask them first as they have to also sign the Enduring Power of Attorney when you make it.

IS MY ATTORNEY PAID FOR WORK UNDERTAKEN?

It is normal practice for a professional attorney, such as an 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.

IS IT EXPENSIVE TO MAKE AN EPA?

No. Legal costs are modest as the paperwork is not complicated once we have discussed the various options that are open to you. It would be much more expensive NOT to have an EPA should you have the misfortune to lose your capacity. We normally recommend clients to make an EPA when making their will.

CAN I HAVE MORE THAN ONE ATTORNEY?

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



DIGITAL ASSETS & EPAS

How many things in your life do you manage or store on your computer, tablet, smartphone or online? Like many people today you probably access photos, videos, music, e-books, blogs, movies, emails, conversations, social media, games, bank accounts, medical records and even maintain your identity - all online. All of these are called “digital assets” and they may be of financial or sentimental value to you and your family. They can be just as precious and important as physical assets that you can touch. They should be part of your general planning for what happens if at any time you lose your mental capacity to manage your own affairs.

WHY ARE MY DIGITAL ASSETS IMPORTANT?

Within just a few years, digital assets have become important in many areas of our lives. We must plan for what happens to our digital assets when we lose mental capacity, for a number of reasons:

Financial Value; such as PayPal accounts, virtual bank accounts, online gaming accounts; bitcoin; photographs; popular domain names or online businesses.

Sentimental Value; in this “digital age” personal assets such as photos or emails may not be in physical form, instead they may be stored on a smartphone, a flash drive, an online photo sharing website, a cloud storage server or a social networking account. If you lose mental capacity and no one can control or access these treasured memories the emotional impact on family and friends can be significant.

Privacy & Confidentiality; private information that other people should be restricted or prevented from seeing. For example, email or Facebook accounts may reveal the existence of relationships or interests that are not widely or otherwise known.

Identity Theft; recent statistics estimate that more than 20 people have their identity stolen through online hacking every minute of every day. When someone loses their mental capacity, they are no longer monitoring the use of their digital assets and so the risk of identity theft is greatly increased.

HOW SHOULD I PLAN MY DIGITAL LEGACY?

- Appoint an attorney - someone you can trust if you become mentally disabled.
- Make a list of your digital assets for your attorney and where to find them.
- Make sure your attorney knows how to access your accounts and passwords.
- Make sure the appointment is effective - different providers and terms of service agreements have different requirements so be specific.

This booklet 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 us and we will guide you through the decisions and choices to be made.



James McNulty & Co.

SOLICITORS



Trust our Experience

James McNulty & Co Solicitors
25-27 George's Street
Omagh
County Tyrone
BT8 1BW

Tel: (028) 8224 2177
Email: reception@jamesmcnulty.co.uk

EST 1931

www.jamesmcnulty.co.uk