



RE: ENDURING POWERS OF ATTORNEY

Enduring Powers of Attorney (EPOAs) in respect of Welfare, and in respect of Property, are documents that anyone can have drawn up and executed (signed), in order to protect the situation for themselves should they become incapacitated, and unable to make decisions in the future.

Terms:

Donor/Subject – the person subject to the EPOA

Attorney – the person/s nominated to act for the Donor/Subject

Protection of Personal & Property Rights Act 1988

These Orders are prescribed under the Protection of Personal & Property Rights Act 1988. This Act has as an underlying principle that everyone is assumed to be competent to make their own decisions in the first instance.

Underlying Principle of Least Restrictive Intervention and Duty to Consult with the Person

The other underlying principle of the Act is that of least restrictive intervention, that is, that any Order, or document, should impact as little as possible in a person's life, and where either Orders exist under the Act, or there are EPOAs, people are to be encouraged to make their own decisions as far as they are able. There is a duty on the Attorney(s) to consult with the subject person as far as that person is capable.

Capacity

The issue of capacity is around someone's ability to understand relevant information, communicate their choices, appreciate the situation and its consequences, and otherwise manipulate information. It can also include extreme physical incapacity.

Execution

Enduring Powers of Attorney can only be executed by a person with capacity, and the advice is that everyone should have Enduring Powers of Attorney in respect of both Welfare and Property, just like everyone should have a Will.

The EPOAs can be directed to take effect immediately, even when a person has capacity, or more usually, to come into effect when a person has lost capacity. More usually, EPOAs are drafted to take effect only with loss of capacity, and with a Doctor's certificate of the same.

Welfare EPOAs, or Welfare Guardian Orders – Health and Wellbeing

Welfare EPOAs, or Welfare Guardian Orders, are in respect of a person's health and wellbeing decisions, such as medical intervention, medication, admission to rest homes. Property Managers, or EPOAs appointing Managers in respect of property, is in respect of real property decisions such as managing bank accounts, paying bills, selling property, etc.

Documents and Costs

The documents are available on the Ministry of Justice website, but they are not easy to follow (even for Lawyers!), and it is more usual for people to instruct a Lawyer to draw up the papers. There is a cost. Most Law firms charging between \$800 - \$1500 depending on whether it is one person executing the two EPOAs, or a couple having mirror EPOAs drawn up.

Granted To

It is usual for the Attorneys to be granted to trusted family members, or friends. The documents need to be signed by the Donor of the EPOA after receiving independent legal advice, which that Lawyer has to certify giving.

The people who the Donor wishes to appoint as Attorneys also need to sign the documents, although they do not need to be signed in front of an independent Lawyer.

Everyone Should Have One

It is really advisable for everyone to have EPOAs drawn up. Otherwise, should a person lose capacity, the only option then is an application to the Family Court which is considerably more expensive, and time consuming.

In the Absence of an EPOA

A Court Lawyer such as myself would need to get involved where a person has become incapacitated for one reason or another, often Dementia, and EPOAs are not in existence. That person lacking capacity cannot then execute an EPOA. The people trying to make decisions for them need to make application to the Court, and again, those documents should be accessible to people without Lawyers, but they are complicated. For an application to be filed in Court for the appointment of either, or both, a Welfare Guardian, or Property Manager, the Court needs to be satisfied that it has the right to deal with the application, so a brief medical report is required to accompany these applications.

The person about whom the application is made, that is, the Subject Person, then has an independent Senior Lawyer appointed by the Court as their Lawyer. That Lawyer has a range of duties and jobs to do, including meeting with the Applicants, and the Subject Person, ascertaining property, determining whether there is, in fact, jurisdiction, that is, the capacity issue, and reporting to the Court.

This process usually takes longer than it should in terms of Court resources at the time, which is another reason for people to execute EPOAs while they still have capacity.

This is a very brief overview of the situation, so I trust it has been of some introductory assistance.

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