

L.E. LAW INFORMATION SHEET NO. 6

GUIDE TO ENDURING POWERS OF ATTORNEY

1. What would happen if you became mentally incapable and unable to manage your affairs?

Unless you have executed an Enduring Power of Attorney your relatives will have no alternative but to apply to the Court of Protection for the appointment of a receiver before access can be gained even to your bank account. The Court of Protection procedure is lengthy and cumbersome and it is necessary for the receiver to file annual accounts with the Court.

Since 1985 it has been possible to sign an Enduring Power of Attorney, which unlike an ordinary power of attorney can operate once a person becomes mentally incapacitated.

2. What does one need to do to appoint an Attorney?

A simple form is required to appoint the Attorney. The appointment can have immediate effect or it can state that it will not operate until such time as you become mentally incapable. If your Attorney believes that you have become or are becoming mentally incapable then he/she may apply to the Court of Protection to register the power. Before that application can be made the Attorney has to notify you and your closest relatives that he is intending to make the application. You or your relatives will have the opportunity to object if they disagree with the application.

3. What is meant by mentally incapable?

A person is mentally incapable if he/she is, because of mental disorder, unable to manage his/her affairs or administer his/her property. "Mental disorder" means any mental illness which results in disability of the mind including mental infirmity associated with age.

4. Which relatives have to be notified of the Attorney's intention to register the power and can therefore object?

The general rule is that the 3 closest relatives must be notified of the Attorney's intention to register the power with the Court of Protection. The Enduring Powers of Attorney Act of 1985 lists categories of relatives in descending order of remoteness. The Attorney must therefore give notice to the spouse (if any) and to the person's adult children (if any). If the person has a spouse and 2 children they are the only people (except for the person who gave the power) who need to be notified by the Attorney. If there is no spouse and no children then the nearest relatives will need to be notified. All the people in a given category need to be given notice even if there

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are more than 3. If a person has no relatives then the Attorney can apply to the Court to have notification dispensed with.

5. What happens if you recover?

If you recover the Attorney must notify the Court.

6. What does the Attorney have authority to do?

The Attorney's powers can be restricted in any way you like. The restrictions should be included in the form, which is used to appoint the Attorney. For example you may not want your Attorney to have the power to sell your house.

Unless you impose restrictions your Attorney will be able to do whatever you might have expected to do yourself, which involves being able to deal with all your assets including your house and includes the ability to make the sort of gifts which you might have expected to make.

7. Who should I appoint?

It is possible to appoint more than one person as your Attorney and if you decide to do so you should consider whether you wish them to act jointly (which means they must act together) or jointly and severally (which means they can act together or independently of each other). The Attorney must be someone in whom you trust. It helps if they have a reasonable knowledge of your financial circumstances.

8. Can the Attorney charge?

Your Attorney will be entitled to recover out of pocket expenses for acting as your Attorney. Express authority should be given to enable professionals to charge for work done.

9. Can you change your mind?

The power can be cancelled at any time before it has to be registered.

10. What should you do?

If you think you would like to safeguard against the risk of having your affairs placed under the control of the Court of Protection by giving an Enduring Power of Attorney, then please contact us (see below).

11. Our charges

Our usual charges for preparing an Enduring Power of Attorney are £75.00 plus v.a.t. This will include an initial meeting or telephone discussion and drafting of the necessary document. We offer home visits at no extra charge to elderly or disabled clients within 15 minutes drive from our offices.

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12. **Disclaimer**

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

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