



Lawyers & Notary Public

Enduring Powers of Attorney

Property

An Enduring Power of Attorney relating to property contains several features. The person giving the Power of Attorney can choose when the Enduring Power of Attorney comes into effect. The options are:

- ❖ Immediately the document is signed (if a person wishes someone else to manage his or her affairs from the date of signing).
- ❖ At some specified time in the future.
- ❖ Or if the person giving the Power of Attorney becomes mentally incapable (“mentally incapable” in relation to property means that the person giving the Power of Attorney cannot manage his or her property affairs).

In addition an Enduring Power of Attorney relating to property has the following further features:

- ❖ The person giving the Power of Attorney can decide whether it covers all of his or her property or just specified assets.
- ❖ The person giving the Power of Attorney can decide whether there are particular conditions he or she would wish to impose upon the use of the Power of Attorney.
- ❖ The person giving the Power of Attorney can stipulate whether it is to take effect for the period of time or for the rest of his or her life.
- ❖ There are a number of other significant legal rules relating to Enduring Powers of Attorney which have recently made the process of establishing one considerably more complicated than previously.

An Enduring Power of Attorney relating to property can be cancelled or changed at any time provided the person giving the Power of Attorney understands what he or she is doing. If a person becomes sick or incapacitated as a result of an accident then unless an Enduring Power of Attorney is in place the family and other close relatives cannot make important decisions. To obtain authority to make such decisions in the case of an accident or illness, it is necessary to make an application to the Court for a manager to be appointed to make decisions on financial matters and a welfare guardian on personal matters. Such applications can be expensive, stressful and take time.

This is why we recommend that anyone over 18 or married or in a de facto relationship should give serious consideration to making Enduring Powers of Attorney. An Enduring Power of Attorney only operates while the person giving it is alive and ceases on death. This is to be contrasted with a Will which only takes effect upon death.

We are happy to advise on all aspects of Enduring Powers of Attorney.