

# the enduring power of attorney (EPA)



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## What is a Power of Attorney?

**A power of attorney** is a legal document by which a person (the donor) allows another person (the attorney) to represent the donor or to act in the donor's place, either generally or for specific purposes. It comes to an end if the donor becomes mentally incapacitated.

**An Enduring Power of Attorney (EPA)**, on the other hand, is a legal document by which one person (the **donor**) states that another person (the **attorney**) will have power to act in the future on the donor's behalf during any later mental incapacity of the donor.

It is thought that a much-needed Office of the Public Guardian will be set up at some stage in the future. The Public Guardian would have the capacity to oversee EPAs and address any problems involving the working, registering or drawing up of an EPA.

### The purpose of an EPA

- To permit you to appoint someone of your choice to control your affairs should you become mentally incapacitated e.g. through brain damage, Alzheimer's disease, or other forms of dementia.

- In order to avoid a Ward of Court application being made in the future. In this situation the court has the power to make decisions on your behalf, where you have been proved as an adult to be of unsound mind. Your property and money is brought under the control of the court and the Courts Service will have the duty of overseeing these in your best interest.

### **How to create an EPA:**

There are a number of steps to creating an EPA. The services of both a doctor and a solicitor are required to create it.

### **The role of the solicitor:**

Your solicitor must be satisfied that the EPA is not being created as a result of fraud or/and undue pressure. In law the document creating the EPA must be in a prescribed form. The document creating the Power of Enduring Attorney must include the following statements by your solicitor:

- 1 That he/she is satisfied that you understood the effect of creating the power.
- 2 That you are acting of your own free will and not acting under another's influence.

## The role of the doctor:

A doctor is required to provide a statement verifying that at the time the document was executed (drawn up):

- You had sufficient mental capacity.
- You understood the effect of creating the power.

## Your role:

You are required to make a statement that you have understood the effect of creating the power. These statements act as legal safeguards to ensure that you are creating the EPA in full legal knowledge of what is involved and that there is no pressure on you to create this power.

You must notify at least two other people when you create an EPA. One of these people must be your spouse if he/she is living with you. If you are unmarried, separated or widowed, one of the two people you must notify is your child (if you have children) or else a relation such as a parent, sister or brother, nephew or niece.

If the attorney later applies to register the EPA, these named relations of yours (called notice parties) must be told of this in writing.

## The point at which an EPA comes into effect

The EPA can only come into operation when it has been registered. A solicitor or the chosen attorney normally has custody of the EPA documents until such time as they are registered in the High Court.

To register an EPA, the appointed attorney must make an application when he/she sees that you are becoming mentally incapable.

The application is made to the Office of Wards of Court, a division of the High Court. This is at 15/24 Phoenix Street North, Smithfield, Dublin 7 (tel: 01-888 6189). This office is principally concerned with the registration stage of EPAs.

Before an application is made, your attorney must notify you of his/her intention to make the application. The attorney must have a medical certificate confirming that you are no longer capable of managing your affairs. This notice must be given to you and to the two or more people (notice parties) who were notified when the EPA was created.

## Objection to the registration of an EPA

The donor and the notice parties have five weeks from the date they have received this notification of registration in which to lodge an objection in the Office of Wards of Court. An objection might be made about, for example:

- the unsuitability of an attorney;
- any suspected fraud or undue pressure on the donor to create an EPA;
- the donor of the EPA not actually being mentally incapable.

## The revocation of an EPA

An EPA can be revoked by the donor at any time **before** an application is made for registration.

## Concerns after registration of an EPA

A person who has a concern about the way a registered EPA is working can write an affidavit (sworn statement) to the Office of Wards of Court about their concern.

Attorneys are not required to keep the courts informed of their actions, but an application can be made by the donor, the attorney or any other interested person to the court for an Order, which can include directions on how the attorney manages or disposes of the property of the donor. The attorney can also be obliged to produce records and accounts if necessary.

### Revocation after registration

When someone wants to revoke an EPA **after** its registration, it is necessary to apply to the High Court. The court can make an Order cancelling the EPA where, for example, it finds that:

- there was fraud or undue pressure put upon the donor to create the EPA;
- the attorney is unsuitable (typically where only one attorney has been appointed);
- the donor is mentally capable and will probably remain so.

## Who can be appointed as an attorney?

Under the Powers of Attorney Act 1996 you can appoint anyone you wish to be your attorney, including a spouse, a friend, a family member or a colleague. You may appoint more than one person to act as your attorney and it is important to appoint two attorneys if possible, in case of the death, incapacity or unsuitability of one of these attorneys. Attorneys can be appointed to act jointly.

Persons who are not permitted to be attorneys include:

- People under the age of 18 years.
- Bankrupts.
- People convicted of an offence involving fraud or dishonesty.
- People disqualified under the Companies Acts from acting as directors.
- An individual, a trust or a corporation who owns a nursing home in which you live or an employee or an agent of the owner (that is, unless that person is also your spouse, child or sibling).

## **Decisions you can authorise your attorney to take on your behalf:**

With an EPA, you may give your attorney(s) a general authority to act on your behalf in relation to all your affairs. You may include an authority to the attorney(s) to make personal care decisions on your behalf. These do not usually include medical decisions. At all times decisions must be made in your best interest.

The attorney, where this is possible, should consult with family members and carers when making these decisions. This is to ascertain what your views are, what would be in your best interest to do or what you would be likely to do in the circumstances.

Personal care decisions may include:

- Where and with whom you should live;
- What training and rehabilitation you should receive;
- Your dress and diet;
- The inspection of your personal papers.

## **Must you give your attorney power over all your affairs?**

No, you decide which powers your attorney will have over your affairs. You can make the EPA subject to particular restrictions or conditions.

### **Can you change the person who is nominated as your attorney?**

Yes, once the stage of registration has not begun.

### **Can you change your mind after executing an EPA?**

Yes, once the stage of registration has not begun. See the section on concerns after registration of an EPA.

### **When does an EPA cease?**

On death, unless previously revoked.

### **Legal Aid**

Civil legal aid is available for a person who wishes to create an enduring power of attorney. You can obtain legal aid or legal advice and assistance through the Legal Aid Board, subject to a means test.

The Board's offices are called Law Centres and are located around the country. For the location of your nearest Law Centre, LoCall 1890 615 200.

All those who are granted legal advice and/or legal aid must pay a fee called a contribution to the Board. The minimum contribution is €10 for legal advice and €50 for legal aid. The law centre staff will advise a person of the actual contribution in each individual case.

As of 1 September 2006 the new **disposable income** limit of a person applying for legal aid has been increased from €13,000 up to €18,000 per year.

The **maximum allowance** (this is an expense which the rules allow you to deduct when calculating your disposable income) on childcare facilities if you are working is €6,000 per child per year. The maximum allowance on accommodation costs (e.g. rent) is now €8,000 per year.

The value of an applicant's home and its normal contents are excluded when assessing the value of his/her capital resources (property), as are the value of the tools of an applicant's trade.

For details of other allowances, contact the Legal Aid Board or your local Law Centre.

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### **Free Legal Advice Centres**

13 Lower Dorset Street  
Dublin 1

**LoCall:** 1890 350 250

**Tel:** 01 874 5690

**Email:** [info@flac.ie](mailto:info@flac.ie)

**Website:** [www.flac.ie](http://www.flac.ie)