

Enduring Power of Attorney

We all prefer to manage our own financial affairs and assets. Unfortunately, this is not always possible. Every day people are involved in accidents or become sick which may lead to not being able to manage for themselves. You can appoint an attorney to manage your finances and assets in such circumstances.

What is an enduring power of attorney?

An enduring power of attorney is a legal document by which you appoint a person to make decisions about your property and financial affairs. The person who makes an enduring power of attorney is known as 'the principal'. The person who you appoint to make decisions for you is known as 'the attorney'.

Why make an enduring power of attorney?

By making an enduring power of attorney, you are choosing who you want to manage your financial and legal affairs. If you lose capacity and do not have an attorney appointed, there may be no one with legal authority to manage your financial affairs. [This may mean that the Tribunal or the Supreme Court will need to appoint a financial manager for you.](#)

What is the difference between a 'general' power of attorney and an 'enduring' power of attorney?

A general power of attorney ceases to have effect after you lose the mental capacity to make financial decisions. An enduring power of attorney will continue even after you lose mental capacity (e.g. if you develop dementia, you have a stroke or sustain a brain injury).

Can the attorney make any decisions apart from financial ones under an enduring power of attorney?

The attorney can make decisions about your assets and finances. This means that they operate your bank accounts, pay your bills and sell or buy property (such as your house or shares) on your behalf. An enduring power of attorney cannot be used to make

medical decisions or lifestyle decisions for you. However, you can appoint an enduring guardian to make these decisions.

Who can make an enduring power of attorney?

Anyone over the age of 18 can make an enduring power of attorney if they have capacity to understand the nature and effect of the power of attorney and must be capable of understanding the range of decisions which the attorney can make on their behalf.

Who should I appoint as my attorney?

An attorney can have significant power over your finances. You should choose an attorney whom you trust and who will manage your finances in a responsible way. [You may wish to appoint a family member or close friend as your attorney.](#)

How many attorneys can I appoint?

You can appoint one or more attorneys. When appointing more than one attorney, you should choose people who can cooperate with each other and who you trust to work together in your best interests. You can appoint your attorneys to act:

- Jointly and severally (this means that the attorneys can make decisions together or separately),
- Severally (this means that any one of the attorneys can make decisions independently of the other attorneys),
- Jointly (the attorneys must agree on all decisions).

What if one of my attorneys dies or cannot continue for some reason?

Your power of attorney may be affected if one of your attorneys dies or cannot continue in their role. This depends on how you appointed the attorneys. If you appointed them to act jointly and one of them is no longer willing or able to carry out their duties, then this will automatically end the enduring power of attorney. However, you can specify that the enduring power of attorney will not automatically end in these circumstances, provided at least one of the attorneys or a substitute attorney remains.

If you appointed your attorneys to act jointly and severally or severally then the enduring power of attorney will continue, even when one of them act can no longer. The remaining attorneys can keep making decisions for you.

What is a substitute attorney?

You can appoint a substitute attorney who can act for an original attorney who is unable to act. You can appoint more than one substitute attorney. A substitute attorney is able to act when there is a vacancy in the office of the original attorney. Vacancy has a legal definition that includes when the attorney has died, resigned or lost capacity themselves, or you can specify the circumstances in which a substitute may act yourself.

What powers can I give an attorney under an enduring power of attorney?

You can give your attorney the power to make decisions about your finances which you could do yourself. These broad powers include selling, buying, or leasing property (such as your house), making investments, accessing cash (including bank accounts) and buying or selling shares. You can control the power you give to the attorney by placing limits or conditions in the enduring power of attorney.

What are the duties and responsibilities of an attorney?

An attorney holds an important position of trust. The attorney is legally responsible to you and must:

- always act in your best interests;
- avoid doing anything as an attorney which would mean that their interests conflict with your interests;
- act in accordance with your instructions while you have capacity to instruct and follow any directions you make in the enduring power of attorney;
- act according to any limits or conditions placed on their authority;
- not give gifts or give themselves or others a benefit using your finances unless you specifically authorise this;
- keep their finances and money separate from yours;
- keep accurate and proper records on their dealings with your finances.

When does an enduring power of attorney start?

You can choose when you would like your enduring

power of attorney to start. You may want the enduring power of attorney to start immediately after you appoint the attorney or at some future date. When you make an enduring power of attorney, you should make it clear when you want it to start. If you do not make this clear, then the enduring power of attorney will start when the attorney accepts the appointment by signing the enduring power of attorney.

When does an enduring power of attorney end?

An enduring power of attorney ends:

- when you revoke it (so long as you have capacity at the time);
- on your death;
- when you have appointed one attorney and that attorney dies or can no longer act as your attorney;
- when you have appointed two or more attorneys to act jointly and one of them dies or can no longer act as your attorney and you have not specified that the remaining attorney can continue to act.

How do I revoke my enduring power of attorney?

You can revoke your enduring power of attorney at any time so long as you have the capacity to understand what you are doing when you revoke it. You must advise the attorney about the revocation in writing otherwise the attorney can keep dealing with your finances. A power of attorney is automatically revoked if you marry after the date of the power of attorney is signed.

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