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LEGAL SERVICES & SOLUTIONS

Guide to Registering
an Enduring Power
of Attorney

Terms used:

“Donor” is the person who made the Enduring Power of Attorney.

“EPA” Enduring Power of Attorney

“Notice Parties” Two people named in the EPA, as Notice Parties.

Before registration

When is the EPA registered?

If the Attorney under an Enduring Power, has reason to believe that the person is or is becoming mentally incapable, the Attorney shall, as soon as practicable, make an application to the court for the registration of the instrument creating the power. “Mental Incapacity” means incapacity by reason of a mental condition to manage and administer his or her own property affairs.

Where is it registered?

The Wards of Court Office, which is a department of the High Court

What documents does the Attorney need to start the registration process?

The Attorney must get a medical certificate stating that the Donor is, or is becoming, incapable by reason of a mental condition of managing and administering his or her own property and affairs. The Attorney gives notice of intention to register the Enduring Power of Attorney to the Donor and the two notice parties named in the Enduring Power of Attorney. This notice must state that the Attorney proposes to make an application to the court for the registration of the document creating the Enduring Power in question and shall inform the Donor that, while the document remains registered, it can only be revoked by the Court.

If the two notice parties are dead or mentally incapable or their whereabouts cannot be reasonably ascertained, the following categories are then entitled to receive the notice instead:

- (a) the donor's husband or wife;
- (b) the donor's children;
- (c) the donor's parents;
- (d) the donor's brothers and sisters, whether of the whole or half blood;
- (e) the widow or widower of a child of the donor;
- (f) the donor's grandchildren;
- (g) the children of the donor's brothers and sisters of the whole blood;
- (h) the children of the donor's brothers and sisters of the half blood.

However, a person is not entitled to receive the notice, if the name or address of that person is not known to and cannot be reasonably ascertained by the Attorney.



This notice must state that the Attorney intends to make an application to the Court for the registration of the document creating the enduring power. It must also inform the person to whom it is given, that the person may object to the proposed registration by notice in writing to the Registrar of Wards of Court within five weeks, beginning with the day on which the notice was given. The notice must also specify the grounds on which an objection to registration may be made.

If the EPA appoints two Attorneys but only one is applying for registration, notice must be sent to the other Attorney.

If all of the paperwork is successful submitted the Wards of Court office, then the Certificate of Registration of the EPA will issue. There is no need for the Attorney to go to Court. The documents are posted in to the Wards of Court office and the Certificate of Registration is then posted out.



After the application is submitted but before registration is completed

What are the grounds for a Notice Party to object to the registration ?

- (a) that the power purported to have been created by the instrument was not valid;
- (b) that the power created by the instrument is no longer a valid and subsisting power;
- (c) that the person is not or is not becoming mentally incapable;
- (d) that, having regard to all the circumstances, the attorney is unsuitable to be the person 's attorney;
- (e) that fraud or undue pressure was used to induce the person to create the power.

How does a Notice Party object?

A Form 4 is submitted to the Wards of Court within in 5 weeks of receiving the Notice of intention to Object. It must contain one of the above grounds. This Form 4 is also sent to the solicitor acting on behalf of the Attorney. Within one month of the lodgement of the Form, an affidavit must be submitted by the objecting person detailing the circumstances of the objection.

What happens if a Notice Party objects?

The court shall neither register the application nor refuse the application, until it has made as it thinks appropriate in the circumstances of the case.

When will the Enduring Power of Attorney not be registered?

1. When a notice party has objected to the registration with 5 weeks of receiving it.
2. When there is no one to give a Notice of intention to register it.
3. When the Court has a reason to believe that appropriate enquiries might bring to light evidence on which the Court could be satisfied, that one of the grounds of objection was established.

Then the Court shall neither grant nor refuse the application, until it has made appropriate enquiries.

What are the powers of the Attorney after application for registration but before it is completed?

Where the Attorney has made an application for registration of the document then, until the application has been determined, the Attorney may take action;

- (a) to maintain the Donor or prevent loss to the Donor's estate,
- (b) to maintain the Attorney or other persons in so far as that is permitted under registration, or
- (c) to make a personal care decision which cannot reasonably be deferred until the application has been determined.

The court may also take action, when it decides it necessary, before an Enduring Power of Attorney is registered to exercise any power under the Enduring Power of Attorney.



After registration is completed

What is the effect of registration of the EPA?

After the registration is completed, the Enduring Power of Attorney cannot be revoked by the person who made it, until the court confirms the revocation. The Attorney cannot step down except on notice to the person and with the consent of the Court. The scope of the authority conferred by the Enduring Power of Attorney cannot be extended after registration.

On registration of an Enduring Power, the Registrar of Wards of Court will supply an attested copy of the Enduring Power of Attorney to the Donor and any persons who were given notice. Members of the public may inspect the register free of charge during normal office hours.

How long does it remain in force?

It applies for so long as the document is registered, whether or not the Donor is for the time being mentally capable

What happens if there is a dispute after an Attorney has been registered?

The Attorney, the person who made the Power of Attorney or any interested party can apply to Court to resolve a dispute. The Court may give a direction about the dispute

What decisions can an attorney make on behalf of a person?

An EPA may limit the authority given to the Attorney to do specified things on behalf of the donor. For example, a restriction that the Attorney may not sell the Donor's house. If it is not restricted, the Attorney has the power to deal with the person's assets freely. While personal care decisions can be made, healthcare decisions cannot.

What decisions can an attorney not make on behalf of a person?

The Attorney cannot make decision outside of the scope of the power granted by the EPA and the law. The Attorney cannot make health care decisions on behalf of the person.



Can an Attorney be substituted?

Yes, but only by the person who created the document and at the time the document is created. It must be stated in the document that a named person can be substituted. An Attorney may not substitute, after the Donor has lost capacity.

Can an Attorney make decisions in relation to himself?

Yes. An Attorney under an Enduring Power, may act under the power for the Attorney's benefit or that of other persons to the following extent but no further.

- (a)** if the Donor might be expected to provide for that person's needs and
- (b)** may do whatever the Donor might be expected to do to meet those needs

Can gifts be made by the Attorney?

Yes. If specific provision to that effect is made in the EPOA document, the Attorney can dispose of the property of the Donor by way of gift to the following extent but no further, by making—

- a)** gifts of a seasonal nature or at a time, or on an anniversary, of a birth or marriage, to persons (including the Attorney) who are related to or connected with the donor;
- b)** gifts to any charity to which the Donor made or might be expected to make gifts.

When does the EPA take effect?

If the person who made it loses capacity to manage their own affairs, the EPA must be registered in the Wards of Court Office. Once registration is completed a certificate of registration will issue and the EPA takes effect from this date.



Does the Attorney keep records of the persons affairs?

The Attorney must keep accounts of the Donor's property and affairs and produce them to the High Court, if required. The accounts should also include details of all costs, expenses and remuneration paid to and claimed by the Attorney. The Attorney must keep the Donor's property and accounts separate from the Donor.

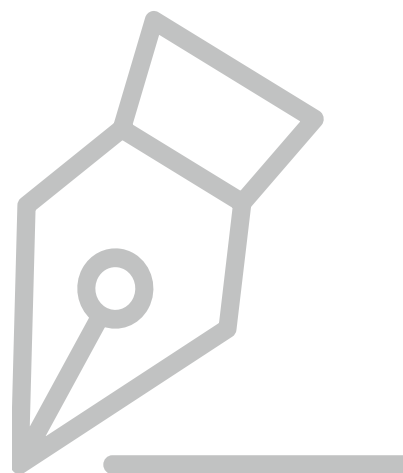
Can the EPA be cancelled?

Yes. It can be revoked by the Donor at any time before it is registered, while the person has the decision-making capacity to do so. Once the EPA is registered, a court application is necessary to revoke it.

When does the EPA come to an end?

On the death of the person who made it. If the Attorney becomes bankrupt or is convicted of any offence if acting as the sole Attorney.

If the Enduring Power of Attorney appoints two Attorneys jointly, and one becomes incapable of acting through incapacity, death or bankruptcy, then the remaining Attorney may continue to act solely. It can come to an end if the person is made a Ward of Court, if the court directs so.





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