

ENDURING POWER OF ATTORNEY ("EPA")

The person who makes the EPA is called the Donor who can choose one or more persons (Attorney) to manage the Donor's property and affairs in the event of him / her becoming mentally incapable of doing so.

The Donor at the time of making the EPA must be capable and have capacity.

The Attorney can be **one or more people**. Generally the Attorney is a spouse or a trusted family member.

NOTE: The EPA only becomes **operative** when the Donor becomes incapable and it is properly registered in the Wards of Court Office.

Preliminary Requirements

In the case of all clients who are not personally known to the office, evidence of identity is needed in order to comply with Anti Money Laundering Regulations – photographic evidence (passport or driving licence) to identify the person and a current utility bill to confirm the address.

The following information should be forwarded to the office in due course so that the required EPA paperwork can be prepared:

Donor

1. Full Name of Donor _____
2. Home address _____

3. Current residential address (if different) _____

4. Occupation (former occupation if retired) _____
5. Marital Status _____
6. PPS number (formerly called PRSI number) _____
7. Contact telephone number: _____

Attorney(s)

Full Name of Attorney _____

Address _____

Telephone number: _____

Full Name of Attorney _____
Address _____

Telephone number: _____

Notice Parties

To put a valid EPA in place for the Donor, at least two of your closest next of kin (separate from your appointed Attorney(s)) are to be notified when the EPA is signed by the Donor. If the Donor is married and living with his/her spouse, then that spouse must be notified. If the Donor is unmarried, widowed or separated, the Donor must notify his/her child or any other relative (parent, sibling, grandchild, niece, nephew)

Name of Notice Party 1: _____

Address: _____

Telephone Number: _____

Relationship to Donor: _____

Name of Notice Party 2: _____

Address: _____

Telephone Number: _____

Relationship to Donor: _____

Doctor

Name of Doctor (who will certify the incapacity of the person) _____
Address of Doctor _____
Contact number of Doctor _____

Assets

List of assets (including any house or apartment) owned or jointly owned by the proposed Ward

Include certificates or valuations in respect of each asset and bank account numbers and branch addresses in respect of all bank accounts. State the location of the deeds and the whereabouts of the last Will (if any) of the proposed Ward

Liabilities

List of debts/liabilities and certificates in respect of each.

Income & Expenses

Details of any current income and outgoings of the proposed Ward

Next of Kin

Full name of next of kin 1

Address of next of kin 1

Occupation of next of kin 1

Marital status of next of kin 1

Religion of next of kin 1

Relationship to the proposed Ward

Full name of next of kin 2

Address of next of kin 2

Occupation of next of kin 2

Marital status of next of kin 2

Religion of next of kin 2

Relationship to the proposed Ward

Full name of next of kin 3

Address of next of kin 3

Occupation of next of kin 3

Marital status of next of kin 3

Religion of next of kin 3

Relationship to the proposed Ward

Full name of next of kin 4

Address of next of kin 4

Occupation of next of kin 4

Marital status of next of kin 4

Religion of next of kin 4

Relationship to the proposed Ward

Petitioner (person making application to the court)

Full name of Petitioner 1

Address of Petitioner 1

Occupation of Petitioner 1

Marital status of Petitioner 1

Religion of Petitioner 1

Relationship to the proposed Ward

Full name of Petitioner 2

Address of Petitioner 2

Occupation of Petitioner 2

Marital status of Petitioner 2

Religion of Petitioner 2

Relationship to the proposed Ward

ENDURING POWER OF ATTORNEY (EPA)

(A) Powers of the Attorney

- By its nature the EPA is flexible and the Donor can make it as 'general' or as 'restrictive' as he/she wishes.
- If it is very general the Attorney would be able to deal with the Donor's money, finances and property and may be able to sell the Donor's dwellinghouse.
- If the Donor does not want his/her Attorney to have such wide powers, the Donor could have restrictions in the EPA such as 'my Attorney may not sell my house' or any other restrictions that he/she instructs.
- The advantage of the EPA is that it is flexible and there is no court supervision. It is probably better not to limit the EPA too much, as it then loses its advantage.

(B) Personal care decisions:-

The Donor may authorise the Attorney to make personal care decisions on his/her behalf:

- Where to live.
- With whom.
- Whom to see.
- What rehab is undertaken.
- Diet and dress.
- Who may inspect personal papers.

(C) Preparing / Drafting / Executing the EPA

- The appointment of one attorney in the EPA is sufficient but two is more usual (in the event of something happening to one or the other). The donor can appoint anyone they wish in the Enduring Power of Attorney but they must be over 18 years of age, not bankrupt, have no criminal convictions, have never been disqualified under the Companies Acts from acting as directors and cannot be an individual, a trust or a corporation who owns a nursing home in which "the donor" lives or be an employee or agent of the owner (unless that person is your spouse, child or sibling). The Attorney is usually a spouse or trusted family member.
- The solicitor must be satisfied that the EPA is not being created under duress or as a result of fraud and the Enduring Power of Attorney must include a Statement from the solicitor stating that he/she is satisfied that the donor understands fully the effect of creating the Enduring Power of Attorney and that he/she believes "the donor" is acting of their own free will and not under the influence of another.

Safeguards:-

- Notice Parties. To put a valid EPA in place for the Donor, at least 2 people (separate from your appointed Attorney(s)) are to be notified when the EPA is signed by the Donor.
If the Donor is married and living with spouse; then spouse must be notified.
If unmarried, widowed, separated; then child, children or any other relative (parent, sibling, grandchild, niece, nephew) must be notified.
- Medical Certificate. A Medical Certificate is required from the Donor's GP, within 30 days, to say that he/she had sufficient mental capacity and understood the effect of creating the Enduring Power of Attorney. This Medical Certificate is appended to the EPA.

What happens then?

The signed EPA is simply placed in the solicitor's safe until such time as it needs to be registered in the High Court, which is in the event of the Donor becoming mentally incapable of managing his / her own property and affairs. The EPA only becomes

operative when the Donor becomes incapable.

Revocation of the EPA

The EPA can be revoked by the Donor at any time up to the point when an application is made for its registration.

(D) Registering the EPA

The EPA can only be registered if the Donor is suffering from a mental illness and as a result is incapable of managing his/her property/affairs.

If the Attorney, at any time in the future, has reason to believe that the Donor is or is becoming mentally incapable of managing his/her property and affairs, the Attorney must apply to have the EPA registered in the High Court. Written notice from the Attorney must be given to WOC office.

To **register** the EPA, there are further **safeguards** to protect the Donor:-

- A Medical Certificate required.
- The Notice Parties (as above) are again notified (if deceased, immediate family members are to be notified).
- The EPA is not active/in force until it has been properly registered in WOC and the High Court Certificate of Registration has issued.

(E) Active EPA

An active EPA is where the Certificate of Registration (of the EPA) has issued from the High Court. Until the EPA is registered and active, the Attorney(s) is not legally entitled to deal with the Donor's property. Banks and other financial institutions will require sight of this document before granting the Attorney access to the Donor's accounts and financial information

- The Attorney is obliged, subject to there being sufficient assets and monies, to look after the needs of the Donor and family.
- The Attorney is obliged to manage the assets / income / pensions of the Donor
- The Attorney should keep accounts, but no accounts filing requirements with WOC. However, they are obliged to produce records and accounts to the WOC if called upon to do so.
- The Attorney is not supervised, but there is a procedure whereby another person may challenge the conduct of the Attorney. Concerns about the way a registered Enduring Power of Attorney is being handled can be directed through the Office of Wards of Court.
- The Attorney is authorised to make the application for State Support under the Nursing Home Support Scheme (Fair Deal) on behalf of the Donor should the circumstances require it. This then avoids the requirement and the associated legal costs to make an application to the Circuit Court to have a Care Representative appointed for this purpose.

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An E.P.A. is strongly to be recommended for anyone who wants to minimise the legal problems his/her family face if he/she should become mentally incapacitated in the future.

If you have any questions in relation to any of the above, please contact McCullagh Higgins & Co. Solicitors.

McCullagh Higgins & Co.

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