

ENDURING POWERS OF ATTORNEY

WHY DO YOU NEED ONE?

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Several years ago, a good friend was visiting her mum who lived interstate. After the visit she spoke to me regarding her mum's health. She had not seen her mum for a few months and was shocked at how quickly her health had declined in such a short period of time.

Not only was her mum not eating properly, she was no longer cleaning her home or able to drive her car after an unfortunate accident. She had also stopped paying her bills.

This diminished mental capacity had been noticed not just by my friend, but also by her mum's doctor.

My friend arranged home care, which solved some of the issues. However, my friend's mum did not have an Enduring Power of Attorney and it was too late for her to be appointed. This is because her mum's diminished mental capacity took away that option.

In this case, the Public Trustee was appointed the administrator of her financial affairs and my friend was appointed her guardian, answerable to the administrator - the Public Trustee.

This arrangement was not completely satisfactory and came at a cost.

All major financial decisions had to be approved by the Public Trustee - the sale of her home, entry into a nursing home, and the execution of her will. Plus, every year a complete audit by the Public Trustee (at a cost) was conducted on all income and expenses.

How could this situation have been avoided? By having an Enduring Power of Attorney appointed before the mental capacity of a person become diminished.

So, what is an Enduring Power of Attorney (EPOA)? And how is it different to a General Power of Attorney (POA)?

Let us first look at a POAs.

A POA can be used to appoint someone to make financial decisions on your behalf for a specific period or event. For example, if you were going overseas and needed someone to sell your house or pay your bills.

It is relevant for the period specified and you can revoke the power of attorney at any time.

The POA will also be revoked once you have lost the capacity to freely and voluntarily make a decision, understand the ramifications of that decision and communicate the decision in some way.

The EPOA

An EPOA is like a POA except, as the name suggests, it is enduring and, if you do lose capacity to make a decision, your appointed attorney is still able to make decisions on your behalf.

So be careful who you choose as your attorney.

When considering who to choose, make sure it is someone you trust as well as willing to take on the responsibility. You should ensure that they don't have financial problems. Consider family members or a close friend who understands your personal wishes and health care needs.

Remember, you are potentially giving another person total control over your assets and the ability to make personal decisions about your health, care and accommodation when you cannot do so yourself.

If you wish, you can appoint more than one attorney as a safeguard.

In the rare cases, where the attorney does not act in the best interest of the person who has appointed them, all states have legislation allowing the public trustee or guardian to investigate the attorney and take action to resolve the matter to best protect the adult concerned.

I should also point out that every state's process regarding these matters is slightly different, so please do talk to someone who understands and can provide direction before going ahead and completing any documentation.

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