

**For further information and/or registration write to :**

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## Enduring Power of Attorney

a public information leaflet

A Public Information Leaflet produced by :  
The Society of Will Writers  
First Floor Chambers – Roe House – Boundary Lane – Sth Hykeham – Lincoln  
Information supplied by the Public Trust Office

**IMPORTANT**  
**You (the Donor) must read and understand**  
**Part A (pages 2&3) before you sign an**  
**Enduring Power of Attorney**  
**Do not sign the Enduring Power unless you**  
**understand what it means**

## Part A : Using the Form

1. You may choose one attorney or more than one. If you choose more than one, you must decide whether they are able to act :

- Jointly (that is, they must all act together and cannot act separately) or
- Jointly and severally (that is, they can all act together but they can also act separately if they wish).

On the first page of the form, show what you have decided.

2. If you give your attorney(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.

3. If you don't want your attorney(s) to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your

attorney(s) may do. Any restrictions you choose must be written or typed where indicated on Form B

4. If you are a trustee (and remember that co-ownership of a home involves trusteeship), you should seek legal advice if you want your attorney(s) to act as a trustee on your behalf.

5. Unless you put in a restriction preventing it, your attorney(s) will be able to use any of your money or property to make any provision which you yourself might be expected to make for their own needs or the needs of other people. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

6. Your attorney(s) can recover the out-of-pocket expenses of acting as your attorney(s).

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*Q What is the order of priority ?*

A

- The Donor's Spouse
- The Donor's children
- The Donor's parents
- The Donor's brothers and sisters (whole or half blood)
- The widow or widower of a child of the Donor
- The Donor's grandchildren
- The children of the Donor's brothers and sisters (whole or half blood)
- The Donor's aunts and uncles (whole or half blood)
- The children of the Donor's uncles and aunts (whole blood)

*Q If there is more than one Attorney appointed to act jointly and severally must they give the notices and make their application jointly?*

A No. But if they do not, any joint Attorney(s) not applying must also be given notice on the form EP1, which can be sent by first class post. If the notices of intention to register do not name all of the Attorney(s) then registration may be limited to only those shown whose names were shown on the forms EP1 & EP2.

*Q What if the Donor has changed their address since signing the Enduring Power?*

A If at the time of making an application for registration of the Enduring Power the Donor's address is different an explanation of this in writing should be given when making the application.

### AFTER THE REGISTRATION OF THE POWER OF ATTORNEY

*Q When the Enduring Power of Attorney has been registered can the Attorney (s) do whatever they like with the Donor's assets?*

A No. The Attorney(s) even if they have an Enduring Power of Attorney without any restrictions or conditions must act reasonably and have regard to the limits imposed by the Enduring Power of Attorney Act 1985

*Q Can the Attorney(s) direct where the Donor should live?*

A No. Attorney(s) do not have "power over person".

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*Q* If the Donor has deleted words in the Enduring Power of Attorney, for example by striking through one of a pair of alternatives, does she or he have to initial all the deletions?

A No, no initials are necessary

*Q* When do the Attorney(s) sign the Enduring Power of Attorney?

A At any time *after* the Donor *but* before the Donor becomes mentally incapable (otherwise the Power will be automatically revoked by the Donor's intervening mental incapacity). It is advisable for the Attorney(s) to sign as soon as possible after the Donor. If there is more than one Attorney they can sign on different days and have different witnesses to their signatures.

Attorneys cannot witness each others signatures. Donors at Attorney(s) cannot witness each others signatures.

**The Attorney(s) should not sign if they believe that the Donor is already incapable of understanding what an Enduring Power of Attorney is what it is intended to do.**

## REGISTRATION OF THE ENDURING POWER OF ATTORNEY

*Q* What happens when the Donor becomes mentally incapable?

A When the Attorney(s) believe(s) that the Donor is or is becoming mentally incapable, the Attorney(s) must apply to register the Enduring Power with the Public Trustee before they can act or continue to act under it.

**Once a Donor has become mentally incapable and before the Enduring Power has been registered the authority of the Attorney(s) to deal with the Donor's property and affairs is limited to the maintenance of the Donor and preventing loss to the Donor's estate. The Public Trustee is not able to advise on the Attorneys authority in these circumstances. However it is the interest of the Donor and the Attorney(s) to proceed with registration as quickly as possible after the Donor has become mentally incapable.**

*Q* What has to be done to register an Enduring Power of Attorney?

A The Attorney(s) must give notice of intention to register, in the prescribed form EP1, to the Donor and to certain relatives of the Donor. The Attorney(s) must refer to Schedule 1 Part 1 of the Act to see which relatives must be notified (order of priority see page 7). Notice to the Donor and specified relatives must be served within 14 days of each other. Application must then be made immediately (within 10 days) in prescribed form EP2 to the Public Trustee accompanied by the original of the Enduring Power and the application for registration fee of £75.

If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well. You may wish to provide expressly for remuneration of your attorney(s) (although if they are trustees they may not be allowed to accept it).

7. If your attorney(s) have reason to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the Court of Protection for registration of this power.

8. Before applying to the Court of Protection for registration of this power, your attorney(s) must give written notice that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney Act 1985. You and your relatives will be able to object if you or they disagree with registration.

9. This is a simplified explanation of what the Enduring Powers of Attorney

**YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE IT HAS TO BE REGISTERED**

Act 1985 and the Rules and Regulations say. If you need more guidance, you or your advisers will need to look at the Act itself and the Rules and Regulations. The Rules are the Court of Protection (Enduring Powers of Attorney) Rules 1994 (Statutory Instrument 1994 No.3047). The Regulations are the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (Statutory Instrument 1990 No.1376).

### 10. Note to Attorney(s)

- After the power has been registered you should notify the Court of Protection if the donor dies or recovers.

### 11. Note to Donor

- Some of these notes may not apply to the form you are using if it has already been adapted to suit your particular requirements.

# Your Questions Answered

## ABOUT THE DONOR

*Q Who can be a Donor ?*

A Anyone - provided they are 18 or over and mentally capable.

*Q When can an Enduring Power of Attorney be made ?*

A It must be made while the Donor is still mentally capable of understanding what the Enduring Power is and what it is intended to do.

*Q How does the Donor complete the form ?*

A The Donor should consider carefully what powers he or she wishes to give to the Attorney(s). The Donor must carefully consider all the points in the explanatory information given in Part A (detailed on pages 2 & 3)

**If the declaration that the power shall continue even if the donor becomes mentally incapable is omitted or deleted the power cannot be a valid Enduring Power of Attorney.**

*Q What authority can the Enduring Power of Attorney give ?*

A A general authority - authorises the Attorney(s) to carry out any transactions the Donor's behalf which the Donor is legally able to delegate to the Attorney(s).

A specific authority - specific power enables the Attorney(s) to deal only with those aspects of the Donor's affairs which are specified in the power.

A general or specific authority with restrictions and conditions - authorises the Attorney(s) to deal with all the Donor's property and affairs except specified aspects; for example, the power may exclude the Attorney(s) right to sell the house in which the Donor resides; or it may direct that the Attorney(s) is/are not to act until an application for registration has been made.

*Q Can the Donor change his or her mind after the Enduring Power of Attorney has been signed by him or her and the Attorney(s)?*

A YES, the Donor can cancel or revoke the Enduring Power at any time while he or she remains mentally capable; but an Enduring Power cannot be cancelled or revoked once it has been registered unless and until the Court of Protection confirms the revocation

## ABOUT THE ATTORNEY

*Q What is an Attorney ?*

A An Attorney is someone who can act on behalf of a Donor in financial matters. If the Donor gives the Attorney(s) general authority to act on her or his behalf in relation to all the Donor's business matters the Attorney(s) will be able to do almost anything that the Donor could have done for example sign cheques, withdraw money from savings accounts, buy or sell shares or buy or sell houses.

*Q What if the Donor does not want the Attorney(s) to have such wide powers?*

A The Donor can restrict the authority of the Attorney(s) by putting restrictions and/or conditions in the Enduring Power of Attorney.

*Q can the Attorney(s) use the Donor's assets to benefit themselves or others ?*

A YES The Attorney(s) will (unless there are restrictions within the EPA) be able to benefit themselves or any other people for whom the Donor might have been expected to make provisions.

*Q When do the powers of the Attorney(s) begin?*

A This depends on whether the Donor has put any restrictions or conditions in the Enduring Power of Attorney, for example the Donor may have made it clear that Attorney(s) cannot act until the Donor becomes mentally incapable or until the Enduring Power has been registered by the Public Trustee. If there are no restrictions or conditions the powers of the Attorney(s) start as soon as the Attorney(s) have signed.

## SIGNING THE ENDURING POWER OF ATTORNEY

*Q When does the Donor sign the Enduring Power of Attorney?*

A Whenever he/she wishes and is happy with the terms of the Enduring Power. The Donor must be mentally capable of understanding what an Enduring Power of Attorney is and what it is intended to do. Someone (not one of the Attorneys and if possible not the Donor's husband or wife) must witness the Donor's signature by being present when the Donor signs - the witness does not need to know what is in the Enduring Power. The witness must sign the Enduring Power and add his or her details in the space provided.

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