

Enduring Power of Attorney – The “Living Will”

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Most people are very familiar with the concept of a Will – a legal document which sets out your wishes as to how your assets are dealt with following your death. But what if you would like someone to carry out your wishes, or act on your behalf while still alive? This introduces the concept of the Power of Attorney.

In Ireland, there are two types of Power of Attorney which people can encounter. The first is a simple “Power of Attorney” and the second is an “Enduring Power of Attorney”.

In certain transactions (for example property transactions), you may be asked to execute a “Power of Attorney”. This is a legal document in which you give another person the power to act on your behalf (your “Attorney”) in respect of all or certain elements of a particular transaction. Usually, these permissions are limited in scope or time – such as the power to execute a document on your behalf in respect of a certain transaction only or, alternatively, to execute documents for you for a defined period. These Powers of Attorney either expire or come to an end if you become mentally incapacitated.

On the other hand, in its simplest terms, an Enduring Power of Attorney is a document in which you appoint one or two persons to look after your affairs, in the event that you are medically diagnosed as incapable of doing so, at some point in the future.

The important thing to note about an Enduring Power of Attorney is that it can only be put in place while you have the mental capacity to do so and, it does not become effective until after you become incapable of looking after your own affairs.

In Ireland, Enduring Powers of Attorney are governed by the Powers of Attorney Act, 1996 and the Enduring Powers of Attorney Regulations, 1996.

Obviously, one would hope that you would always be in a position to manage your own affairs, and that the need for an Enduring Power of Attorney would never arise,

however, it is a sensible precaution to put one in place as it enables you to:

- appoint a person or persons of your own choosing to act on your behalf,
- reduce the stress of your family at an already difficult time,
- prevent family disputes in relation to assets and care decisions,
- access a far cheaper and straightforward route than the alternative - a Ward of Court Application.



An Enduring Power of Attorney is suitable for people of any age - for situations involving acquired brain injury, psychosis or other physical and/or mental dysfunction which may have a permanent or temporary effect on a persons ability to manage their own affairs. Let's take dementia, for example, this is one mental illness that most people would have either a level of understanding of or experience with.

There is no age limit for dementia; there have been cases of people in their 30s, 40s and 50s having being diagnosed with dementia. In fact, one in 10 people diagnosed with dementia are under the age of 65. The statistics are startling; according to the HSE, it is estimated that 55,000 people in Ireland are living with dementia and over half a million of us have a family member with dementia. 4,000 people develop dementia each year, approximately 11 people every day.

Aside from the trauma of dealing with this disease the situation can be made even more stressful if the situation has not been catered for legally, by creating an Enduring Power of Attorney.

The Enduring Power of Attorney can allow your Attorney to look after either

- (1) your financial and property affairs, or
- (2) your health and personal affairs, or
- (3) all of your affairs (financial, property, health & personal affairs).

You may give your Attorney as much or a little power as you choose. The decision is entirely yours.

Your Attorney can be anyone that you wish, a family member, a friend, solicitor or accountant, and you can nominate as many Attorneys as you wish. You should also consider nominating an alternate Attorney in the event that one or more of the appointed Attorneys cannot or will not act.



Your Attorney will take over your assets and your affairs. The Attorney should therefore have the capacity and the skills to look after your affairs in an appropriate manner.

The Enduring Power of Attorney is relatively inexpensive to set up. We strongly recommend to all our clients to execute an Enduring Power of Attorney with their Solicitor in conjunction with their Wills. This is a 'just in case' document , an Insurance Policy against loss of mental capacity, where you appoint others to act on your behalf to make financial decisions for you if you can no longer make decisions or to act for yourself. Like all insurance policies we hope we never actually need them, but when we do, we are glad we have them in place.