



HAVE YOU FUTURE PROOFED DEALING WITH YOUR HEALTH AND ASSETS?

If something happened to you that meant you were unable to look after yourself and your assets, how will things get done?

By the time they reach their 30s, most people have provided for the distribution and protection of their assets after they die (through a Will). However, few people have put in place a plan that will assist them if something happens which makes them unable to take care of their own affairs.

An Enduring Power of Attorney ("EPA") can help.

Why do you need an EPA?

If you become unable to manage your affairs yourself due to an accident, illness, or aging, it is extremely important that you have in place some form of arrangement whereby someone else can do this for you.

Otherwise, a Court Order must be obtained to enable family members (or your friends, your doctor, etc) to act as your attorney. Such applications can be costly and there is always a risk that the person the Court chooses may not be the person you would have chosen, or that person may not act in the way you would have wished.

How does an EPA work?

In a nutshell, an EPA is a document under which you appoint another person to make decisions on your behalf if you are unable or do not wish to do so.

There are two types of EPA:

AN EPA in relation to property; and

An EPA in relation to personal care and welfare.

An EPA in relation to property, authorises your attorney to act in relation to all, or a specified part, of your assets. It is possible to state conditions and restrictions on the powers granted to the attorney and the assets which are covered by the EPA.

An EPA in relation to personal care and welfare, authorises your attorney to act in relation to your health and living arrangements, either generally or in respect of specific matters.

Who can make an EPA?

Anyone who is able to understand the nature and effect of the powers granted by the EPA, can make an EPA.

Who should you appoint as your Attorney?

When deciding who to appoint as your attorney, it is wise to consider the following:

You need to have trust and confidence in the person you appoint.

For a personal care and welfare EPA, due to the nature of the decisions involved, it is usual for the attorney to be a family member or friend.

Many people appoint trust companies as their property attorney. You cannot appoint a trust company as a welfare attorney.

The attorney must, if an individual, be over the age of 20 and not bankrupt.

Misuse of Attorney's power

Recent amendments to the Protection of Personal and Property Rights Act 1988, have increased the safeguards against abuse of elderly and disabled people. These amendments arose as a result of concerns that some attorneys were misusing their powers under EPAs and not acting in their donor's best interests.

It is now mandatory that when you enter into an EPA, you are provided with independent advice at the time of signing to ensure you understand the implications of conferring that power under the EPA.

When does an EPA come into effect?

An EPA in relation to assets will come into effect:

While you are mentally capable (and it can continue to have effect if you become mentally incapable); or

Only if you become mentally incapable.

You decide the option when the document is prepared.

As a general rule, an EPA comes into effect when you are no longer able to understand and process relevant information and appreciate the choices available to you, or understand the implications of your decisions.

More New Year's Resolutions!

In last month's article we talked about the importance of getting a Will and making it a New Year's Resolution to get one, if you didn't have one. One of life's certainties is that one day, your Will will be needed; less certain, is whether one day you will need an EPA. But as much as none of us like to think about something happening to a friend, family member or to us which would necessitate an EPA, it is always worth considering your options, just in case.



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If you would like further information on any of the topics in this article, please contact the writer.

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