



Law Society
of Northern Ireland

Consumer Guide to Enduring Powers of Attorney





What is an Enduring Power of Attorney?

An Enduring Power of Attorney (an “EPA”) allows you (the “Donor”) to choose a person or persons (an “Attorney(s)”) to deal with your property and affairs. Your Attorney(s) must act in your best interests. This means your nominated person can, if you wish, begin dealing with your affairs from when it is signed.

If you lose mental capacity to deal with your affairs, your Attorney must register your EPA with the court at the Office of Care and Protection.

It will not cover health and welfare matters.



Why would I need a solicitor to make an EPA?

It is strongly recommended that you obtain legal advice before signing an EPA to understand:

- the legal requirements, including the form and signing and witnessing requirements to be valid;
- how you wish it to operate, including any restrictions your Attorneys should have – such as only coming into operation if you lose capacity;

- if you appoint more than one Attorney, whether they are allowed to act jointly or jointly and severally and the consequences of this.

Having a solicitor deal with this may also mean that it is less likely to be challenged if it needs to be registered at the Office of Care and Protection in the event you lose mental capacity. Your solicitor can also help with the legal requirements for registration.



What will it cost?

The cost can vary depending on your circumstances, how many Attorneys you may appoint and any restrictions on how the Attorney(s) can act. The paperwork is not complicated but the cost will depend on your circumstances and individual requirements.



What am I getting by using a solicitor?

Your solicitor will provide you with legal advice to identify risks and the consequences of any restrictions, or the lack of restrictions in your EPA.

Your solicitor will ensure that the form is filled in correctly and signed and witnessed correctly.



Common Questions

Is my Attorney paid?

It is normal for a professional Attorney such as a solicitor or an accountant to be paid. Otherwise, Attorneys can only recover out of pocket expenses, unless authorised by the Court. For example, expenses involved in registering an EPA and legal expenses would be legitimate expenses.

Can I revoke my EPA?

Yes while you remain mentally capable and your EPA has not been used. You should give notification of revocation to your Attorney(s). Once an EPA has been registered it can only be revoked with the consent of the Court.

If I recover capacity, who is in charge of my affairs?

An EPA can be deregistered to allow you to resume control yourself. Your solicitor can guide you on this process. In the meantime, your Attorney will retain control.

Do I need an EPA if I have a will?

Yes. Your will is only relevant after your death. An EPA deals with managing your property and finances while you are alive.

If I have limited assets is there any point?

Yes. Your Attorney(s) can manage your pension or benefits, if appointed.

What if my assets are jointly owned?

If it becomes necessary for a jointly owned house to be sold, only a person with authority (such as an Attorney) can sign on your behalf. One joint owner cannot sign deeds for all co-owners. Often joint bank accounts are frozen if a bank becomes concerned that one party is no longer capable, and no EPA is in place. This can cause cash flow problems for all the account holders.

Can I have more than one Attorney?

Yes. It is often practical to have more than one Attorney. If so, you must decide whether they can act independently of each other or must always act together. This choice is not entirely straightforward, and there are important implications which your solicitor will be able to guide you through.

Who should I appoint?

Someone you trust completely, whether a family member, friend or professional advisor. An EPA gives your Attorney complete control of your property and finances (unless restricted) and you must be confident your Attorney will have your best interests at heart. Be sure to discuss your intentions with any Attorney you intend to appoint, as an Attorney must accept such an appointment and sign the EPA form.

What can my Attorney do?

Subject to the terms of your EPA, an Attorney has wide authority to effectively stand in your shoes and make all decisions about the your property, income and finances, which you could have made, with a few exceptions. An Attorney cannot make a will for you, for example. They can make gifts but only for reasonable amounts in relation to the value of your money and property.

Can my Attorney make medical decisions?

No. Your Attorney has no power to make medical or personal welfare decisions for you.

What if my Attorney loses capacity?

If you have more than one Attorney and they are authorised to act jointly and severally, the remaining Attorney can continue.

If the EPA has been registered, the Court can cancel the EPA.

Otherwise, you can revoke your EPA and appoint a new Attorney(s).

Will I know if my Attorney has applied to register my EPA?

Your Attorney is obliged to give you formal notice if steps are being taken to register your EPA. As an added protection your Attorney is also obliged to give notice to a number of your next of kin. You, or family members notified can lodge an objection with the Office of Care and Protection, if it is considered the registration is inappropriate.

Your solicitor will provide you with legal advice to identify risks and the consequences of any restrictions, or the lack of restrictions in your EPA.



Timescales

1	Enduring Power of Attorney form drafted and signed;
2	If no restrictions are included, an Attorney is authorised to deal with the Donor's property and affairs with immediate effect;
3	If the Donor loses capacity, the Attorney(s) must register the EPA with Office of Care and Protection.



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