

Wills, Power of Attorneys & Guardianships

Wills:

A will lets you decide what will happen to your assets, or your estate such as your bank account, your home, your car and any furniture or personal belongings. It allows you to divide your estate as you choose between your family, friends and community organisations, arrange for the guardianship of any minor children and to name the executor you would like to carry out your wishes. You can leave specific bequests to special people in your life; you may leave money to someone or leave it generally to your family. This is your last say as to how your belongings are to be distributed.

An executor of your will is the person or persons you trust to distribute your estate as per your wishes. You may have anyone you trust over the age of 18 years old or several executors if you desire.

You can also amend your will at any time. If you do not have a will at the time of your death an administrator is appointed by law to settle your affairs.

Enduring Powers Of Attorney:

An Enduring Power of Attorney is a document you can sign to appoint someone you trust to act for you to manage your property and financial affairs.

This document states what you can authorise the person acting for you to do and can be limited to certain situations, between specific dates or quite general.

You decide what they can and cannot do on your behalf.

Any action taken by the person authorised as your power of attorney is legally binding on you and therefore must be someone you can trust.

An Enduring Power of Attorney continues while you desire it and can be cancelled at any time while you have the capacity to do so. An Enduring Power of Attorney still operates when you lose the capacity to make your own decisions.

This Power of Attorney must be made when you are of sound mind, and must be witnessed and explained by your solicitor.

They can come into effect immediately or can remain dormant and come into effect in particular circumstances and cease to operate when you pass away.

Some simple propositions which should be engraved in the mind of all persons accepting appointment as attorney include:

- Death of the donor terminates the appointment of the attorney. Nothing should be done by the attorney after the death, other

than to account to the executor for the funds under the attorney's control.

- The property of the donor remains the property of the donor. The appointment of an attorney is not an occasion to effect a premature distribution of the donor's estate while the donor is alive, even though perhaps lacking capacity to deal with his or her estate.
- Attorneys are in a strict fiduciary relationship with donors. They must act at all times in the best interests of the donor. Particularly, they will not make gifts to themselves or otherwise prefer their own interests above those of the donor, as for instance by making inadequately secured loans at un-commercial rates of interest to themselves; and
- There must be no intermingling of funds. If an attorney is unable to keep simple accounts, properly documenting receipts and payments on behalf of the donor, he or she should consider not accepting the appointment.

Enduring Guardianships:

An enduring guardian is someone you appoint to make personal, health or life-style decisions on your behalf should you lose the capacity to make them for yourself.

The enduring guardianship only takes effect if and when you lose the capacity to make your own decisions.

You will need to decide what functions your guardian will have such as to decide where you may need to live or what medical treatment you will receive. A guardian cannot consent to any new or experimental treatments or any direction that would involve an unlawful act or override your objection to medical treatment.

When you appoint an enduring guardian you must have the capacity to understand what you are doing. You can appoint anyone over the age of 18 years old to be your guardian. You may even appoint more than one person to be your guardian if you desire. The person you appoint must be someone you trust to make decisions in your best interests should you not be able to make them yourself.

You can revoke an enduring guardianship while you are still capable of making your own decisions. You will need to see your solicitor to have this document drawn up and witnessed as required by law.

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