

NHFA Infosheet 10

Enduring power of attorney

What happens when a person is no longer capable of handling or managing their own affairs? Most commonly this will apply to older people who by reason of illness, disability or mental impairment can no longer deal with even simple financial matters like handling a bank or building society or transacting a house sale. Without an Enduring Power of Attorney such an individual's assets are effectively 'frozen' until a Court of Protection Order can be granted. This procedure can be avoided if steps are taken early enough to appoint an Enduring Power of Attorney.

What happens if I become incapable of handling my affairs and have not appointed a Enduring Power of Attorney?

The Court of Protection will appoint a 'Receiver' of their choice. This will be a lengthy and costly procedure involving initial and annual fees as well as charges relating to each transaction. These costs will exceed those related to setting up an Enduring Power of Attorney.

What is an Enduring Power of Attorney?

It is a document which appoints someone to act on your behalf in connection with your financial affairs. This may be necessary for a number of reasons. The person who is given the power to act on your behalf is called your Attorney. It may be sensible to appoint more than one Attorney.

How does it differ from an ordinary power of Attorney?

It continues in force even if you become mentally incapable of managing your own affairs. An ordinary Power of Attorney would automatically lapse in those circumstances, just when it was most needed.

Why should I make an Enduring Power of Attorney?

So you can have the opportunity of choosing someone to look after your affairs if you become mentally incapable.

Otherwise the choice might be made for you and Court of Protection proceedings would be the only alternative. This may not be just because of your age. You might have an accident at any age which rendered you incapable of dealing with your affairs.

Who can make an Enduring Power of Attorney and when can it be made?

It can be made at any time provided you are over eighteen years of age and in full control of your mental faculties.

What authority can an Enduring Power of Attorney give?

This can be specified in the document. It can relate to all your property and affairs, or it can be restricted to cover only certain areas. Conditions and restrictions as to its use can also be put in the document, e.g. that your Attorney must not invest your money in particular types of investment.

When do the powers of the Attorney begin?

This too can be specified. They can begin as soon as the forms have been completed or at a later date, e.g. upon your request to your Attorney or when your Attorney believes that you are becoming incapable.

What happens if I become mentally incapable?

The Power must be registered with the Court of Protection. Your Attorney must complete a number of steps:

- They must inform you and your close relatives of his intention to register the Power. This gives you or them the opportunity to object.
- They should then apply to the Court of Protection for registration.

- If there are no objections within four weeks of the application, the Court will stamp the original Power as having been registered.

What happens then?

Your Attorney can continue to be responsible for your capital and income. Revoking an Enduring Power of Attorney. An Enduring Power of Attorney can be revoked by you at any time while you are still mentally capable but not by you once it's registered.

Neither the Public Court Office nor the Court of protection normally supervises the attorney's actions. However, if there are concerns that the Attorney may be abusing the power then the Court of Protection can be asked to investigate the actions and if necessary supervise the exercise of the power or as a last resort impose a receivership order. Can my Attorney direct where I should live or what medical treatment I should have? No. The power only extends to your financial affairs.

Can the Attorney make a will and lifetime gifts on my behalf?

Unless they make a special application to the Court of Protection for the execution of a statutory Will, your Attorney may not make or change your Will. There are also restrictions on the gifts which your Attorney may make on your behalf without a similar special application.

Scottish Law

There are a number of differences relating to this type of Power of Attorney. For details please ring our Advice Line.

NHFA Solicitors' Panel

The NHFA has a National panel of Solicitor firms who have a particular empathy towards the needs of older people and experienced in dealing with matters of family law. Further details can be obtained from our Care Advice Line.

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NHFA Trust and Estate Planning Services

Trusts

These can be used to organise your estate in a way in which you feel it may most benefit you and your family. They are particularly useful in reducing inheritance tax liabilities.

Estate Planning

The NHFA can advise you on arranging your affairs for inheritance tax mitigation as well as care fee planning.

Seek advice

The financial and legal implications to be considered when paying for care are wide, and require careful planning. Older people or their relatives should seek specialist advice on what their entitlements are from the state, what legal matters they should attend to and how best to use their capital and income to meet ongoing care costs and possible changing care needs.

Taking the worry out of paying for care

NHFA advice, which is available to all regardless of means, aims to enable older people to afford the cost of their chosen care for as long as they need it.

Since 1992, the NHFA, through its experience in specialising in long-term care funding, has developed a range of financial solutions to meet most care home residents' needs. This not only enables care costs to be met but also enables many to preserve as much as possible of their original capital, with that, their independence, dignity, right of choice and, as many older people wish, the ability to leave an inheritance.

NHFA advice is available to all regardless of means

Further information and advice on paying for care or free copies of the NHFA Long Term Care Guide can be obtained from:

St Leonard's House, Mill Street
Eynsham, Oxford, OX29 4JX

Care Advice Line: 0800 99 88 33
Telephone: 01865 733000
Facsimile: 01865 733001
Website: www.nhfa.co.uk
E-mail: enquiries@nhfa.co.uk

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NHFA care advice line 0800 99 88 33
www.nhfa.co.uk