

Registration of an Enduring Power of Attorney

Introduction

An Enduring Power of Attorney (EPA) is a form of power of attorney whereby one person (the 'donor') appoints one or more persons ('the attorneys') to make decisions and which (unlike an ordinary power of attorney) continues to operate if the donor lacks capacity. However, in that situation, an EPA can only operate if it is registered.

An EPA was the predecessor to the Lasting Power of Attorney (LPA), which replaced it on the 1 October 2007. Whilst no new EPAs can any longer be made, valid EPAs in existence as at 30 September 2007 continue to be effective, and the attorney's duties continue as previously.

The law provides a safeguard against the abuse of an EPA by imposing a duty on the attorney to register the document with the Office of the Public Guardian (OPG) as soon as the attorney believes that the donor is, or is becoming, mentally incapable of managing his or her property and affairs.

If an attorney fails to apply for registration when he has reason to believe that the donor is, or is becoming, mentally incapable, he runs the risk that the donor has become mentally incapable and that his authority has been temporarily suspended. Once the attorney has applied to register, limited authority is restored to the attorney, thus enabling him to maintain the donor and to prevent loss to the donor's assets.

Assuming that no successful objection to registration is made, the OPG will register the Power, and the full authority of the attorney will then be restored.

This information sheet is intended to be a general guide to the details of the registration procedure. There may be

significant differences in practice according to the individual circumstances. In some cases there may be no relatives to whom the donor can give notice of intention to apply for registration; in other cases there may be numerous relatives who must be given notice.

Although this information sheet refers to "the attorney", there may, of course, be more than one attorney. If the donor has given more than one EPA, the registration obligation arises at the same time and the registration process, and fee, is applicable to each separately.

Outline of registration procedure

Briefly, the registration procedure is as follows:

- 1 the attorney must give the donor and, usually, various other people notice of intention to apply for registration. Prescribed form EP1PG is appropriate. Notice must be given to:
 - a the donor
 - b certain near relatives of the donor and
 - c any other attorney who is not being informed as a relative and who is not joining in the application.
- 2 A person is not entitled to receive notice if:
 - a his name or address is not known to the attorney and cannot reasonably be ascertained by him or
 - b the attorney has reason to believe that person has not attained the age of 18 years or is mentally incapable

Head Office
3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

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- 3 The position with regard to relatives is that at least three relatives, if there are three that qualify, must be given notice. The relatives are placed in certain classes in an order of priority, and if the requirement to give notice to three relatives means that one in a class is notified, then all in that class must be given notice. The order of priority is as follows:
 - a the donor's spouse
 - b the donor's children (including adopted children but not step children)
 - c the donor's parents
 - d the donor's brothers and sisters, whether of the whole or half blood
 - e the widow or widower of a child of a donor
 - f the donor's grandchildren
 - g the children of the donor's brothers and sisters of the whole blood
 - h the children of the donor's brothers and sisters of the half blood
 - i the donor's uncles and aunts of the whole blood and
 - j the children of the donor's uncles and aunts of the whole blood
- 4 The attorney must make the application for registration (using prescribed form EP2PG) as soon as possible after the date on which the last notice was given in form EP1PG
- 5 The completed form EP2PG should be sent to the OPG together with the original Enduring Power of Attorney and a cheque for the registration fee
- 6 On receipt of the application, the OPG will normally hold the papers for 35 days from the date of the last form EP1PG. If everything is in order and if no objections have been received, registration will then take place. The EPA will be returned to the applicant, duly stamped as registered.

Practical implementation

- 1 The form EP1PG which is to be handed to the Donor should be signed by the Attorney. It should be dated with the date on which it is handed to the Donor. This date is referred to below as "D date". D date should be deferred until after all the other forms EP1PG and form EP2PG have been signed by the Attorney and returned to the person who is to send the papers to the OPG.
- 2 The additional forms EP1PG should be signed by the Attorney. They should normally be dated with D date.
- 3 Form EP2PG should be signed by the Attorney and dated with D date. Any blank spaces on form EP2PG should be completed.
- 4 On D date the following actions should be taken:
 - a one form EP1PG should be handed personally to the donor. It cannot be sent by post
 - b the additional forms EP1PG should be sent by first class post or handed to the relatives and to any other attorney who is not joining in the application and
 - c form EP2PG should be sent by first class post to the Office of the Public Guardian together with:
 - the original EPA and
 - a cheque made payable to the "Office of the Public Guardian" for

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the registration fee - currently £82.
(Please note that if the donor cannot afford to pay the fee they may be eligible for a fee exemption or remission. Please contact us for further details.)

Information needed

The main information which is required to prepare forms EP1PG and EP2PG is as follows:

- 1 as regards the donor:
 - a the full names
 - b the present address
- 2 as regards each attorney:
 - a the full names
 - b the present address
 - c age
 - d occupation
- 3 as regards each of the donor's nearest relatives who are entitled to receive notice:
 - a the full names
 - b the present address
 - c the relationship to the donor.

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

If you require further information, please discuss with your usual contact in the firm or Louise Mathias-Williams or Una Angus, on 01892 510000 or by email at:

l.mathias-williams@ts-p.co.uk

una.angus@ts-p.co.uk

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