

Understanding Enduring Guardianship and Enduring Power of Attorney

Life has a way of presenting us with the unexpected. While we can't always see what's around the corner there are many ways to prepare for difficult times. Enduring guardianship and enduring power of attorney are two ways to protect us when things go wrong. They grant a nominated person the legal authority to make decisions should we who become incapacitated or lose mental capacity through old age or illness.

This is a very important subject that all families with aging parents need to consider. This is a brief explanation of these important documents but is not a substitute to legal advice.

Enduring Guardianship

What is Enduring Guardianship?

An enduring guardian is someone legally appointed to make everyday living decisions should a person become unable to make these decisions for themselves. The person may be unable to make those decisions due to various circumstances such as old age or illness.

The word "enduring" indicates that the responsibility is continual, typically until death of the appointer or appointee.

Who can be an Enduring Guardian?

The enduring guardian must be over 18 years of age and understand the responsibility. They cannot be someone who receives payment for taking care of the person. The enduring guardian should be someone the person trusts, who knows them well and can be relied on to make the best decisions on their behalf.

Enduring Power of Attorney

What is an Enduring Power of Attorney?

An enduring power of attorney is a legal document which allows a nominated person to make financial decisions should a person lose capacity to make decisions for themselves. Like an enduring guardianship, this is useful in cases of incapacity through old age or illness. A power of attorney only allows the nominated person to make decisions regarding financial matters such as the bank account, paying bills and the sale and purchase of property.

Difference Between Enduring and Non-Enduring Power of Attorney

It is important to note the difference between a general power of attorney and an enduring power of attorney. A general power of attorney ceases to operate if the

person loses mental capacity. An enduring power of attorney continues to operate after the person loses mental capacity.

Who can be an Enduring Power of Attorney?

The enduring power of attorney must be over 18 years of age and understand the responsibility. They cannot be someone who receives payment from the person for any personal services. The person should consider appointing someone who is capable of managing finances since the enduring power of attorney will have control of all their finances.

Frequently Asked Questions

Can I appoint the same person to be both Enduring Guardian and Enduring Power of Attorney?

Yes. But you should be careful as this gives a lot of power to one person. This person should be someone that you trust, who knows you well and will respect your wishes.

I have a Will. Is that enough?

A will sets out the distribution of the estate when you pass away. It does not set out who makes decisions for you while you are alive. If you are incapacitated then an enduring guardian or enduring power of attorney can make decisions on your behalf.

Does my Power of Attorney have to be a legal practitioner?

No. The word “attorney” is only used to describe the person acting on the your behalf. They do not need any legal qualifications to be the power of attorney.