

Enduring Powers of Attorney

At Hiscocks Lawyers we believe an Enduring Power of Attorney (EPA) is critical for all adults. It provides protection to you. And it enables you to choose who will make decisions on your behalf, should the need arise. The following information will assist you to understand what an EPA is and how it works.

What is an Enduring Power of Attorney (EPA) ?

An EPA allows you to give someone else (your Attorney) the authority to make decisions on your behalf.

You can make and sign an EPA provided you are:

- Over 18 years of age; and
- Have the capacity to understand the nature and effect of making the EPA.

Who needs an Enduring Power of Attorney?

Every adult should have an EPA. Accidents and illness can happen at any time. Having an EPA ensures you are protected. Should you not be able to make decisions, someone of your choosing can.

What type of decisions can my Attorney make for me ?

You can give your Attorney the power to make personal and health care decisions. They can also make financial decisions if you choose.

Examples of personal decisions include where you live and who you have contact with. Examples of healthcare decisions include choosing which medical procedures and treatments you have. Financial matters include managing your bank accounts and other assets such as your home.

When you make an EPA, you can instruct the Attorney how to handle these matters. You can choose the extent of the authority and the matters they have power over. For an EPA to be effective it is critical you seek legal advice.

Who should I appoint as my Attorney ?

Your Attorney must meet the following criteria:

- Be 18 years of age or over; and
- Not be bankrupt; and

- Not be your paid carer. Please note a person receiving a carer's pension to look after you is not regarded as a paid carer.

Because your Attorney has considerable authority, you must choose people you trust. For personal and health matters it is critical your Attorney understands your needs and wishes. Trusted family and friends are often the best option.

For financial matters, we recommend you choose someone who understands financial matters. It is also desirable that they are responsible with their own money.

You may appoint one or more people as your Attorney/s for personal and health matters. You can appoint someone else as your Attorney/s for financial matters. In other words you can have several Attorneys.

How many Attorneys should I appoint ?

We recommend that you appoint at least two Attorneys. You want these two people to be able to work together well.

When you appoint more than one Attorney, you need to decide how they will act. There are 3 choices for how they will make decisions:

- Jointly - all Attorneys make the decisions together; or
- Individually - one Attorney can make a decision without the agreement of others; or
- Successively - you can appoint alternate Attorneys should your Attorney not be able to act. Couples often appoint their adult children as successive Attorneys.



When will the Attorney's power begin ?

For personal and health care matters, your Attorney's power only begins if and when you lose decision-making capacity.

For financial matters, your Attorney's power begins whenever you specify in the EPA document.

Please note, even if you nominate that the Attorney's power to make financial decisions commences immediately, you can still make your own decisions while you have capacity.

How long does the EPA continue ?

You can revoke your EPA at any time, providing you have capacity to understand the nature and effect of your actions.

An EPA is generally automatically revoked if:

- You marry someone other than your Attorney; or
- Your spouse is your Attorney and you get divorced; or
- Your spouse is your Attorney and they are no longer able to act and there is no successive Attorney.

An Attorney's power ends:

- Immediately upon your death; or
- Upon receipt of a written notice of resignation from the Attorney.

Does my Attorney have to tell anyone else about their decisions ?

This will depend upon the terms you choose to include in the EPA.

You may require your Attorney to notify you and anyone else that you nominate.

What if my Attorney does not act properly ?

If you are unhappy with your Attorney you can revoke the EPA. Please note, this can only happen if you have the capacity to understand your actions.

If you do not have capacity to do this for yourself, then the Public Guardian may assist. They can investigate the Attorney's actions. And they can take action to protect your interests. An Attorney who fails to act properly can be ordered to pay compensation.

What is an Advanced Health Directive (AHD) ?

An AHD allows you to give written, binding directions about your future health care.

It allows you to give instructions about specific matters including;

- Treatments you would like; and
- Treatments you would not like.

Your doctor must be involved in the preparation of your Advanced Health Directive.

How do I go about arranging an EPA and/or AHD ?

These important documents require the assistance of an experienced Lawyer. If they are not completed and executed properly, the consequences can be devastating for all parties.

We invite you to contact us to discuss further.



Who are Hiscocks Lawyers?

Hiscocks Lawyer was founded in 1999, by Alison Hiscocks.

At Hiscocks Lawyers we pride ourselves on providing personalised services. And we are committed to doing that with care, compassion and professionalism. We are privileged to be the trusted advisor to our clients as we assist them and their families through their life's journey.

Our services include:

- Wills, EPA and Estate Planning;
- Estate Administration;
- Elder Law; and
- Property and Business Conveyancing.

We invite you to contact us to book an appointment.

We would be delighted to take care of you.



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