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Powers of Attorney / Advanced Health Directive

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Powers of Attorney

What is a Power of Attorney

A power of attorney is a formal agreement that allows you to appoint someone to have the power to make decisions on your behalf.

The person giving the power is the donor and the person receiving the power is the attorney.

Why should I have a Power of Attorney

Throughout our lives we are required to make a multitude of important decisions ranging from those dealing with our property, finances and health.

What happens if something happens to us and we are no longer able to make these decisions ourselves. We may, have an accident or illness and become mentally or physically incapacitated or we may just lose our abilities due to the aging process.

To protect ourselves and our families in these situations we can appoint a power of attorney and these important decisions can be made by, the attorney on the donors behalf.

Two types of Powers of Attorney

There are two types of powers of attorneys, a general power and an enduring power of attorney.

The difference is that a general power of attorney ceases when the donor becomes mentally incapacitated or dies, whereas an enduring power continues to be effective in the event the donor becomes mentally incapacitated.

The one to chose is the one which will best suit your needs.

It is important to note that there is always the risk of accident or illness and due to this it is advisable to make an enduring power of attorney so as the power to act for you endures through your mental incapacity.

Who should I appoint as my Attorney?

The appointment of an attorney is an extremely important decision to make and should be given a great deal of consideration.

When deciding who to appoint the issue of trust in that person should be of paramount consideration. Your attorney, should be able to be relied upon to act in your best interests at all times.

A family member or friend is eligible to be appointed. You may wish to appoint a professional to look after your affairs. You may appoint a Solicitor, the Public Trustee or a private trustee company.

When appointing an attorney the person appointed must be over eighteen (18) years of age and must not be your paid carer.

A paid carer does not include someone receiving a carer's pension or similar benefit but includes someone such as a nurse earning a wage for caring for you.

A person who is bankrupt may not be appointed as an attorney.

How do I appoint an Attorney?

If making a general power of attorney there is one standard form to fill out.

In relation to an enduring power of attorney there are two different forms that you may use depending on your needs.

The "short form" will be used for those who appoint the same person to be the attorney for their financial and health matters or if you only wish to appoint an attorney in relation to one area eg. personal and not financial or vice versa.

The "long form" will be used when you need to give more detailed instructions as in the case of appointing more than one attorney.

Basically the donor fills in the applicable form giving power of attorney to someone of their choice.

The donor then specifies the types of decisions the attorney will have the power to make eg. Financial, personal etc. The attorney then signs the acceptance section on the bottom of the approved form.

Once this is complete the attorney has the power to act pursuant to the instructions the donor has chosen on the form.

What powers will my Attorney have?

You can give your attorney powers to make decisions about your personal matters (including, health - discussed in detail later) and financial matters. You may give your attorney power to deal with both of these or one of these, the choice is yours.

The standard forms you fill in will guide you in determining the power you give to your attorney.

In relation to health matters your attorney's power will begin if and when you become incapable of making decisions yourself.

In relation to financial matters the power begins on a date or occasion you have nominated or when you become unable to make decisions, whichever happens first.

If you do not nominate a time for the power to begin it will commence immediately. If the power begins immediately and you are still capable of making decisions you may still continue to do so, having a power of attorney does not prevent you making your own decisions while you are still able to.

Advanced Health Directive

As said earlier the risk of accident and illness is always present in our lives and for this reason you may wish for someone to be able to make health care decisions on your behalf in the event you are unable to.

This may be done by having an advance health directive. Often referred to in the past as a "living will" an advance health directive contains directions on the type of health care a person wants or does not want if they lose capacity.

An example is withdrawal of life support, however strict conditions must be fulfilled before a health care provider is obliged to follow this particular direction.

The advantage of an advance health directive is that it has a safeguard - a health care provider is not obliged to follow a directive if its terms are uncertain, if the terms are contrary to good medical practice or if circumstances have changed so that the directions are no longer appropriate.

The reason behind an advance health directive is that a power of attorney does not have specific power to deal with all health matters.

Issues such as withdrawal of life support, sterilisation and organ donation cannot be dealt with by a power of attorney. They may however be addressed in an advance health directive.

You are the only person who can make decisions of this nature and the only way to do this is through an advance health directive.

How do I make an Advance Health Directive?

There is a form which may be filled out. You may have general directions or specific directions. The more specific the direction the easier it will be to follow.

The form is filled out by you and a doctor must complete a section on the form also.

The form must then be witnessed by someone who is over twenty-one (21) years of age, and who is a Justice of the Peace, Commissioner for Declarations or a Solicitor.

Once the form is complete it should be kept in a safe place and a copy should be given to your doctor and your family. You may even wish to carry a card in your wallet stating you have completed a directive and where it may be found in the case of an emergency.

It is necessary to realise that the form does not allow you to breach the law. It makes no provision for euthanasia and at all times the advice of health carer providers will be taken into consideration when following a directive.

What if I change my mind?

When appointing an attorney or completing an advance health directive you can always change your mind.

A power of attorney may be revoked by completing a special revocation form or by filling out a new Enduring Power of Attorney form. If the power is revoked or altered you should always inform the attorney or else they may continue to exercise the power.

To alter your advance health directive you may simply complete a new one. Of course all changes can only be made whilst you are of sound mind.

Important things to remember

Decisions relating to your health and financial well being not only affect you but also your family and friends. If you do not have a power of attorney or advance health directive your family and friends will not know what decisions you would like made.

Accidents and illness are stressful and can be made more so by being unprepared. Making a power of attorney or advance health directive helps lift the burden and strain on your family and ensures your wishes are carried out.