

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is an “old style” lasting power of attorney and they can no longer be made. EPA’s made before 1st October 2007 when the system changed, remain valid and can still be used.

They relate only to financial matters and allow an attorney to manage anything to do with your property and finances e.g. bank accounts, investments, pensions, benefits, tax affairs and buying and selling property as if they were you but cannot be used for anything relating to health and welfare.

EPAs can be used by an attorney immediately once they are signed (with the donor’s permission) and do not need to be registered before they can be used.

A downside of the EPA, and one of the reasons the system was changed, is that once the donor has lost mental capacity the attorneys must stop using the EPA and register it with the Office of the Public Guardian (OPG). The registration process is time consuming and this means that at the time you most need the document, it cannot be used until it’s sealed and returned.

Registering Enduring Power of Attorney

The first thing you must do is notify the donor, family members and other attorneys that you intend to register the EPA using form EP1G. This must be sent to the donor, at least 3 of the donor’s family members who are over 18 and have mental capacity and all attorney’s who are appointed to act jointly and severally and who are not applying to register the EPA.

The 3 family members who are informed must be taken from the following list in order:

1. donor’s husband, wife or civil partner;
2. donor’s children (including adopted children but not including stepchildren);
3. donor’s parents;
4. donor’s brothers and sisters (including half-brothers and half-sisters);
5. widow or widower or surviving civil partner of the donor’s child;
6. donor’s grandchildren;
7. donor’s nephews and nieces (children of the donor’s full brothers and sisters);
8. donor’s nephews and nieces (children of the donor’s half-brothers and half-sisters).

9. donor’s aunts and uncles (full brothers or sisters of a parent of the donor);
10. donor’s first cousins (children of the donor’s aunts and uncles who are full brothers and sisters of a parent of the donor).

If there is no family member in a particular category, then you move on to the next one. You must notify every family member in a category even if that means notifying more than 3 people. The attorney registering the EPA counts as one of the people to be told if they are also a family member.

All possible steps must be taken to find the family members and attorneys to be informed. If you cannot locate them or if there are not 3 family members alive, you must inform the OPG.

As soon as you have notified the family members and attorneys you must complete the application form and send this to the OPG with the original EPAs and the registration fee which is currently £82 per application.

Family members and attorneys have 35 days from the date they receive the notification to lodge objections.

How long will it take?

Registration is usually completed between 8 and 10 weeks once the application has been received and family members/attorneys informed. This will take longer if anyone makes an objection.

What happens next?

Once registered, the OPG will return the EPA to the application stamped with a Court Seal and you can continue using it as before with the following changes :

- The attorney(s) must now answer to the OPG or the Court if anyone questions their actions.
- The donor cannot end the EPA without confirmation from the Court.
- The attorney(s) cannot disclaim (retire) unless they give notice of this to the OPG.
- The attorney now has full responsibility for managing the donor’s property and affairs as they have been deemed incapable of doing so themselves.

As for all powers of attorney, once a donor dies they cease to be valid and must be returned (if registered) to the OPG for cancellation.