

## **ENDURING POWER OF ATTORNEY**

An Enduring Power of Attorney (ENDURING POWER OF ATTORNEY) gives authority to another person to sign legal documents on his or her behalf. The ENDURING POWER OF ATTORNEY is signed before a witness and can give the power to deal with bank accounts, investments, cars, houses, etc. It can give another person power to sign any legal document which the grantor could legally sign. The document is called “enduring” since it still has legal effect if the grantor loses their mental capacity and is unable to care for his or her own financial affairs.

### **Why should you sign an ENDURING POWER OF ATTORNEY?**

If you did not sign an ENDURING POWER OF ATTORNEY and became mentally incapacitated, your nearest relatives would have to bring a Court Application to be appointed your Trustee. No one could deal with your financial affairs, such as writing cheques on your behalf or selling your house, unless they obtain a Court Order. The Court Order appoints a Trustee who will have to file his accounts with the Court and obtain the court’s approval on a regular basis which will be once every 2 to 3 years. This process is expensive since it involves retaining a lawyer, and often an accountant to prepare the accounting records in a proper fashion. This procedure, however, does provide considerable safeguards in ensuring that your property will be used for your exclusive benefit. If you want to avoid these expenses and have chosen a trusted family member or advisor who can take care of your financial affairs, you should sign an ENDURING POWER OF ATTORNEY.

### **When does an ENDURING POWER OF ATTORNEY come into effect?**

An ENDURING POWER OF ATTORNEY can take immediate effect if you state this and it will also continue if you become mentally incapacitated. Most people state that the ENDURING POWER OF ATTORNEY will take effect only on them becoming mentally incapacitated and that this event will occur if two medical doctors write letters to this effect. An ENDURING POWER OF ATTORNEY can be changed or revoked anytime you wish, if you maintain your mental capacity, but it cannot be changed if you have lost your mental capacity.

### **Who should I choose as my “Attorney”?**

In the ENDURING POWER OF ATTORNEY, The Attorney is the person (or persons) you choose to handle your financial affairs. This person is most often a spouse or close family member. The person should know your wishes and you should trust them to make financial decisions you would have made if you had maintained your mental capacity. You can choose more than one person or a corporate Trustee to act as Attorney, and if the first chosen Attorney is unwilling or unable to act, you can choose an alternate. In the ENDURING POWER OF ATTORNEY, you can specify the powers and direction you give to your Attorney. For example, you can state that you want to live in your house as long as possible and be provided with home care, but that if two medical doctors deem it advisable that you not live in your home, then the Attorney will have power to sell the house. You could also put in powers to continue giving Christmas or Birthday gifts to grandchildren.

**Who should prepare the ENDURING POWER OF ATTORNEY?**

Many precedent EPAs are available at stationary stores and they are legally valid if signed in front of a witness. However, this can be an important document in your estate planning and it should be carefully drafted. A lawyer can ensure that you do not insert clauses in the ENDURING POWER OF ATTORNEY that could be inappropriate and that you have the clauses properly drafted to ensure that your wishes will be carried out. Also, it is important that when you sign the ENDURING POWER OF ATTORNEY, that you were fully aware of its legal effect. A lawyer will ensure that proper advise as been given and will document the interview to ensure that you or your family member had the capacity to understand the ENDURING POWER OF ATTORNEY when it was signed.