



How Enduring Powers of Attorney can keep you safe

An information sheet for clients of Atkinson Crehan Law

We often receive enquiries from clients who want to know how their personal affairs would be managed if they lost their mental capacity. Possibly you know or have heard of someone who through age, disease or accident, has lost their mental capacity to the extent that they can no longer handle their own affairs. It is a good idea to consider who you would wish to look after your personal affairs and property if that ever happened to you.

We find that in most cases, clients choose to make an EPA for both Property and, Personal Care and Welfare. It is important to note that your EPA only lasts while you are alive. It dies with you.

The legal document that enables you to appoint someone to look after your affairs is called an EPA and there are two types:



Property

Covers your money and assets and can be used before you lose mental capacity (for example, you are overseas for an extended period and wish to appoint a family member or trusted friend to make decisions if required over your family home).



Personal Care & Welfare

Covers your health, accommodation and associated care decisions and only comes into effect if a medical professional or the Family Court decides you have become 'mentally incapable'.





Clients often ask what will happen to their property (or their personal affairs) if they become mentally incapable without having an EPA in place to enable someone to act on their behalf.

In those circumstances, it is usually necessary for a family member or someone else to apply to the Family Court to be appointed as manager of your property and as your welfare guardian. This would require a written application to the Family Court supported by medical evidence showing that you had become mentally incapable.

This can have the following disadvantages

- ▶ It involves greater expense and there may be delays which can be difficult and stressful for your family and friends; and
- ▶ The person appointed to act as your manager and your welfare guardian may not necessarily be the person whom you would have chosen.

We recommend that you put in place an EPA appointing someone to look after your affairs if you have not already done so. The procedure is relatively simple and it enables you to appoint a person of your choice to be your Attorney.

By doing this you will avoid the disadvantages outlined above if you later become seriously ill or mentally incapable. It is quite common for a family member to be chosen to act as the Attorney.

It is also possible for different people to be appointed to act as your Attorney in relation to property matters and personal care and welfare. As far as property matters are concerned either one, or two or more people can act together as the Attorney but only one person can be appointed as your Attorney for personal care and welfare.

The great thing about an EPA for property is that you have it prepared in advance so it can be activated immediately if you need it and it continues to be effective after you are no longer capable of dealing with your affairs yourself.

The EPA for personal care and welfare comes into effect only once you are no longer capable – but granting it now gives you peace of mind that you have decided, ahead of time, who you trust to make decisions for you if you can't decide for yourself.

It's important for every adult, whatever their age, to take steps to create an EPA and in particular to consider making an EPA for property when purchasing a family home or other assets.

