

Importance of Enduring Power of Attorney

An elderly woman owned and lived in her home for many years after her husband passed away.

Over time she slowly started showing signs of dementia, doing things like forgetting to lock the door or turn off stove elements.

Her children decided it would be a good idea for her to move in with one of them and for her house to be sold.

They went to a lawyer to discuss selling the property and were surprised to learn that because of their mother's lack of mental capacity, she couldn't sign an agreement to sell the property.

Her children thought they could sign on her behalf automatically, which is not the case.

She had not appointed anyone as her Power of Attorney, so they did not have the right to sign on her behalf.

Unfortunately the above scenario is not uncommon.

Nor is it limited to the elderly, because people at any age are



**LEGAL
MATTERS**

**ALAN
KNOWSLEY**

RAINEY COLLINS LAWYERS

unfortunately involved in accidents that affect their mental capacity, leaving no-one to make decisions on their behalf.

Enduring Powers of Attorney are documents whereby you can appoint someone to make decisions on your behalf if you are unable (or unavailable) to do so yourself.

There are two types of Enduring Power of Attorney:

■ In relation to your property.

This authorises your attorney to act in respect of all of your property affairs, but can be limited to

only specific property if appropriate.

"Property" means everything you own – your house, investments, bank accounts, personal belongings etc. You can choose whether you want this type of Enduring Power of Attorney to come into effect immediately, or only if you become mentally incapable.

■ In relation to your personal care and welfare (medical matters).

This enables an attorney to make medical and other decisions about your care and welfare (for example, medical, moving into an aged-care facility).

This type of Enduring Power of Attorney only takes effect if you become mentally incapable.

Many rest homes require Enduring Powers of Attorney to be in place before they will admit a resident.

Enduring Powers of Attorney need to be made through a lawyer because there are strict rules around them.

What happens if you don't make an Enduring Power of Attorney before you are deemed mentally incapable?

In the case above, without an Enduring Power of Attorney in place, the only way the children could be appointed to act on her behalf is through the process of applying to the court to be appointed her property manager or welfare guardian, which is time-consuming and much more expensive than preparing an Enduring Power of Attorney.

Can your partner sign things on your behalf?

It is not uncommon for people to assume their partners can sign things on their behalf, but that is not generally the case.

Your partner will generally be able to sign in relation to jointly owned property (depending on the type of property), but will not be able to deal with any accounts, policies or possessions if they are solely in your name.

Every adult should have

Enduring Powers of Attorney, because accidents affecting mental capacity can happen to anyone at any time.

However, here are some key events in your life that should cause you to particularly consider an Enduring Power of Attorney or, if you already have one, to update it:

■ Getting married, separated or divorced.

■ Entering into or ending a de facto relationship.

■ Travelling overseas.

■ Buying a house.

■ If you are experiencing health concerns or failing health.

■ If it is possible you may be moved into an aged-care facility in the near future.

Your lawyer will be able to advise you what is best for your situation.

■ Column courtesy of Rainey Collins Lawyers, ph 0800 733484.

■ If you have an inquiry, email Alan on aknowsley@raineycollins.co.nz.