

ADVANCE DIRECTIVE

An Advance Directive is a statement of your wishes regarding health issues in circumstances where you may be unable to communicate your carefully considered views at that time.

Your Attorney must give consideration to your wishes in your Advance Directive.

It is NOT a legally binding document in that the current laws of New Zealand will apply and may be contrary to your stated wishes.

Amongst the issues you should consider before signing an Advance Directive are:

1. An Advance Directive should be made at the same time as you appoint an Attorney pursuant to an Enduring Power of Attorney as to Personal Care and Welfare.
2. Your Advance Directive should be reviewed by you regularly.
3. You can revoke your advance directive at anytime.
4. With an Advance Directive:
 - a) Your Attorney, family, friends and doctors and other healthcare providers will know how you wish to be treated if you become seriously ill;
 - b) those closest to you will not have to guess what you wish; and
 - c) those closest to you will know that you have carefully considered the issues to encourage them to respect your wishes.

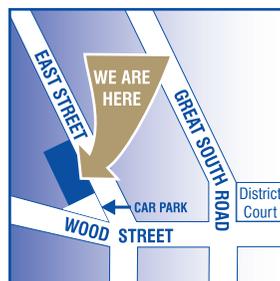
Discuss making an Advance Directive when seeing us about your Enduring Power of Attorney.

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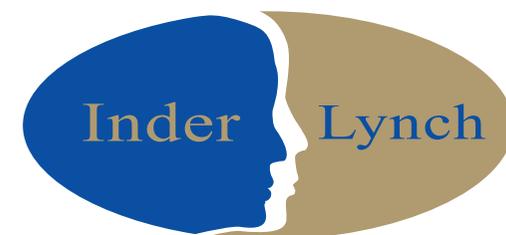


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Enduring Powers of Attorney



LAWYERS

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Important facts about Enduring Powers of Attorney

1 What is a Power of Attorney?

A Power of Attorney is an authority in writing given by one person (“the Donor”) to another (“the Attorney”) to act in the Donor’s absence. At general law such power ceases if it is revoked by the Donor, the Donor dies or the Donor becomes mentally incapable.

2 What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a particular form of Power of Attorney which remains valid even if the Donor becomes mentally incapable (i.e. legally incapable). It is authorized by the Protection of Personal and Property Rights Act 1988 (“the Act”) which was enacted to cover eventualities of mental incapacity such as those caused by accident or illness. There are two forms of Enduring Power of Attorney – Property and Personal Care and Welfare.

3 What is an Enduring Power of Attorney as to Property?

It is a form of Enduring Power of Attorney which relates to property (all assets and liabilities). With this form of Enduring Power of Attorney you may have one or more Attorneys and it becomes operative, at your discretion, either at the time of signing or if you become mentally incapable.

4 What is an Enduring Power of Attorney as to Personal Care and Welfare?

It is a form of Enduring Power of Attorney which relates to non-property issues such as medical care, accommodation matters and personal issues. With this form of Enduring Power of Attorney you may only have one Attorney and it becomes operative only if you become mentally incapable.

5 What is the process for signing Enduring Powers of Attorney?

We are required to give you legal advice as to the effects and implications of such Enduring Powers of Attorney without

the intended Attorney/s being present. We must be satisfied that you have legal capacity to understand the nature of the power/s being given. Then we must witness your signature and certify that we have complied with the requirements of the Act. We cannot witness the Attorney’s signature.

6 Who should be my Attorney?

It needs to be a person or persons whom you fully trust. The Attorney/s will be able to make major decisions about your assets and your care. You need to be certain that they will make such decisions in your best interests (not their own).

7 What obligations are there on my Attorney?

- You can specify in the Enduring Power of Attorney:
 - a. the person/s you require the Attorney to consult when making decisions about your affairs;
 - b. the person/s you require the Attorney to provide information to about your affairs.
- The Attorney must retain records of all financial transactions undertaken by the Attorney on your behalf. Failure to keep such records is a criminal offence.
- The Attorney is not entitled to be compensated for being the Attorney unless you specify in the Enduring Power of Attorney the extent of any remuneration for their role as Attorney for you.

8 Who decides if I am mentally incapable?

The Act requires certification of incapacity containing prescribed information to be by a health practitioner. You can specify the kind of health practitioner you want to undertake the assessment of mental capacity.

9 Can I revoke my Enduring Powers of Attorney?

You can revoke your Enduring Powers of Attorney at any time whilst you have legal capacity to do so. This revocation must be communicated to your Attorney/s in writing.

10 Can my family challenge decisions of my Attorney?

Provisions contained in the Act give jurisdiction to the Family Court to review decisions of Attorneys and to make future directions as to both property and personal care matters. Both the Attorney/s and those bringing any challenge have the opportunity of presenting their respective points of view. Generally, the legal costs of such reviews make the process prohibitive for most families.

11 Without Enduring Powers of Attorney, what can happen to my affairs if I become mentally incapable?

Your family would have to apply to the Family Court for appointment of a Property Manager and a Welfare Guardian. Both Court Orders have a similar effect to the two forms of Enduring Power of Attorney. However, there is considerable extra expense in making the applications to the Court, with the need to also renew the Orders on a regular basis and provide annual financial reports to the Court.

12 Should I also have an Advance Directive?

There is now a greater demand to have a person’s wishes relating to ongoing health issues recorded. A document specifying these wishes is a guide to your Attorney, family members and health care providers, enabling them to make decisions where and when possible in accordance with your wishes. A recent amendment to the Act now requires the Attorney to give consideration to the Advance Directive.

13 Do I need Enduring Powers of Attorney?

Although it is prudent for all adults to have Enduring Powers of Attorney, we consider it essential for older clients to have Enduring Powers of Attorney for both Property and for Personal Care and Welfare. Not only will it make it easier for your family to deal with matters if your health deteriorates but also it ensures that you decide who will be in charge of your affairs and what powers and restrictions should apply.