

Planning for Incapacity

Enduring Powers of Attorney

Who will manage my property if I become incapacitated?

If you do not have an enduring power of attorney, only the Court has the power to appoint someone to manage your property if you become incapacitated. Someone in your family will have to apply to the Court for a Trusteeship order under the *Dependent Adults Act*. This is a rather costly procedure. Legal fees will be charged for the initial court application, and every two years thereafter when the Trustee has to return to the Court and make a full accounting of the use of the money and property.

What is a power of attorney?

A power of attorney is a document which appoints a person to manage your property. An ordinary power of attorney is revoked if you become incapacitated. If you signed a power of attorney before June 1991, it is probably an ordinary power of attorney.

What is an enduring power of attorney?

An enduring power of attorney continues (endures) if you become mentally incapable. Court approval is not required.

The Province of Alberta passed the *Powers of Attorney Act* in June 1991. This legislation now enables you to appoint an attorney to manage your financial affairs in the event of your incapacity. There are two types of enduring powers of attorney: an "immediate" power and a "springing" power.

Immediate Enduring Power of Attorney

An "immediate" enduring power of attorney gives your attorney the power to manage your estate as soon as it is signed and continues should you lose capacity. This type is usually more appropriate when you are leaving the country for a while and wish someone to manage your property while you are away. It can also be useful where you choose to have someone help you manage your money now.

Springing Enduring Power of Attorney

A "springing" enduring power of attorney has no effect until you lose capacity. With this type, you will name a person to decide when you have become incapacitated (perhaps a doctor or one or more of the members of your family). The power of attorney springs into effect when that person decides that you are no longer capable of managing your property.

You should choose the type of enduring power of attorney that is most appropriated to your circumstances.

An enduring power of attorney is a very powerful document because it gives your attorney the power to do almost anything that you could do with your property. Great care should be taken in planning an enduring power of attorney. It is not a solution for everyone but it can be a very effective tool in the appropriate