



## **APPLYING TO REGISTER AN ENDURING POWER OF ATTORNEY**

### **Registration**

If you have been appointed as attorney under an EPA, you must apply to register it when the donor is or is becoming mentally incapable of handling their own affairs. This is done on form EP2, a copy of which we can supply.

You should contact us as soon as you believe the donor is becoming mentally incapable and we can advise further.

### **Medical Evidence**

It is not necessary to provide medical evidence unless the EPA says you do. If you are in any doubt, it would be sensible to get a medical report from a doctor.

### **The powers under an EPA**

Once the application has been made, the attorney has limited powers to maintain the donor and prevent any loss to their money and property. They will have full powers under the EPA once it is registered.

### **Serving notice of Registration**

Before lodging form EP2, the donor must be told of the intention to register the EPA. At least three of their relatives must also be told. This must be done on form EP1, a copy of which we can supply. The order of priority for telling relatives is:

- The donor's husband or wife;
- The donor's children (including adopted children, but not stepchildren);
- The donor's parents;
- The donor's brothers and sisters (including half brothers and sisters);
- The widow or widower of the donor's child
- The donor's grandchildren;
- The donor's nephews and nieces (children of the donor's brothers and sisters, including half brothers and sisters);
- The donor's aunts and uncles (but not if they are only related by marriage); and
- The donor's first cousins (children of the donor's aunts and uncles).

If there is more than one person in any of these classes of relatives, they must all be told. The attorney should give the donor notice themselves and leave it with them. All notices must be sent to relatives by first-class post within 14 days.

### **What if giving notice will upset the donor?**

If you believe that giving notice will harm or distress the donor, the Court of Protection may consider doing without it. You need to support your view with a letter from a doctor.

### **Who must give notice**

It should be you although it can be someone else if it is more convenient. You must include the name and address of that person on registration form EP2.

### **If there are no contact addresses**

If you do not know the name or address of a relative and cannot reasonably find it, the relative is not entitled to notice. It is up to you to decide whether it is possible to get these details. If a relative is under 18, or mentally incapable, they are not entitled to notice.

If you do not want to send notice to a relative for a particular reason, you can apply to avoid the notice on form EP3. Again, we will be able to supply a copy of this form for you. The Court must be satisfied that:

There are special circumstances; or  
Serving notice would be harmful to the donor, impractical or would serve no useful purpose.

### **How to get the necessary forms**

You can get forms EP1, EP2 and EP3 from:

The Customer Service Advice Unit at The Public Guardianship Office (Court of Protection),  
Archway Tower, 2 Junction Road, London N19 5SZ;  
Stationers who sell legal forms; or  
Ourselves or other advisers.

### **Attorneys who are also relatives**

In this case the attorney can be counted as one of the three relatives who need to receive notice. For example, if they are the son of a donor who has no living husband or wife, but has three children, only the other two children need to receive notice.

However, remember that notice needs to be given to the whole class of relatives as we group them above. So if a donor has:

No husband, wife or parents alive;

Two children who are both attorneys; but  
10 brothers and sisters;

Notice has to be given to all brothers and sisters.

### **Fewer than three relatives**

This should be entered on form EP2 or in a covering letter.

### **Attorneys appointed Jointly and Severally**

All their names must appear on the notices (forms EP1). But if only one attorney wants to make the application, this will be accepted as long as every other attorney receives notice on form EP1. If the forms EP1 do not name all the attorneys, registration may be limited to the attorneys whose names are shown on the forms EP1 and form EP2.

### **Attorneys appointed Jointly**

You must all apply together. If this is not possible, the EPA will not be registered.

### **After service of notice**

The application for registration (form EP2) should then be completed.

### **Filling in the application**

Fill in all sections of form EP2 following the advice given in the boxes in the margin. If there is not enough space on the form to include all the details of attorneys or relatives, extra information can be provided separately.

You must make sure all the information on the form is correct. It is an offence under the Enduring Powers of Attorney Act 1985 to make statements which are known to be false in an application. The penalties include prison, a fine, or both.

### **Where to send the application**

The application must be sent to the EPA Team at The Public Guardianship Office within 10 days of serving the last notice. Alternatively, the forms may be returned to us and we will be pleased to deal with the matter on your behalf.

### **What should be included**

the original EPA;  
the application for registration form (EP2); and  
the application fee (cheques payable to “the PGO”).  
It is a good idea to retain a copy of the EPA.

### **If the original EPA is missing**

If it is lost, it is possible to register a “certified copy”. This means a copy which is signed on every page (including Part A) to show that it is a true copy and has not been tampered with in any way. We can do this on your behalf.

A sworn written statement explaining how the original was lost and how and when the certified copy was made may be sent. Again we will be pleased to assist with this.

### **Payment of application fee**

The fee is normally paid from the donor’s assets. But if they cannot afford it, the Court of Protection can be requested to postpone or do without payment. The request should be made in writing, with evidence to support it.

### **After application**

The EPA Team at the Court of Protection will check the EPA and application form. If there are any problems, they will contact the attorney or ourselves, if we are dealing with the matter on their behalf. This will usually be within three to four days. If there are no problems, a registration date will be set and notification will be sent and if we have been instructed, we will also have notification of this date. The date will be 35 days from the latest date on which notice was sent or gave the notices of intention to register (EP1). This is because everyone who is entitled to notice is also entitled to object to the application for registration.

### **Returning the EPA**

The Court will return the EPA with a Court of Protection stamp to say when it was registered. This will be done within five days of the registration date.

### **EPA cannot be registered**

If the application or the EPA has mistakes which need to be corrected, this must be done before the EPA can be registered. We can help and give advice on this, or contact with the Court of Protection can be made direct. If for some reason the EPA cannot be registered, consideration should be given as to whether the donor is mentally able to make another EPA.

If this is not possible, a decision as to whether to apply to appoint a receiver should be made.

## **OBJECTIONS TO REGISTRATIONS**

### **Someone objects to registration**

The Court will send a copy of the letter of objection to the attorney or to us if we are instructed, for comments. If the reasons for objecting are not clear or valid, or there is little to comment on, the Court may ask for more information from objectors before copies are sent.

### **Approach to an objection**

The attorney is the donor's choice. The Court must respect the donor's wishes as shown in the EPA unless there is a good reason for refusing to register it. The Court has a duty to register the EPA unless we are convinced about an objection.

### **Reasons for objections to be made**

Someone may object to the EPA being registered if they believe that:

it is not valid;  
it no longer applies;  
the application is made too soon;  
the attorney has committed fraud or put unnecessary pressure on the donor to make the EPA, or  
the attorney is an unsuitable person

The Court will need medical evidence to support any objection based on the first three points.

### **What happens next?**

Sometimes the Court of Protection will carry on copying letters between the attorney and the person objecting until there is a full exchange of views. If the Court considers there is little or no evidence to support the objection, they may dismiss it and register the EPA.

But if there is clear evidence for an objection, they may refuse registration. They may then have to consider appointing a receiver to manage the donor's affairs.

If the Court cannot resolve the dispute quickly by correspondence, they will pass it to the legal arm of the Court of Protection to consider arranging a hearing. This gives the attorney and the objectors the chance to put their views in person. These hearings are fairly informal, but they are a Court. The attorney and those objecting may, if they want, ask us or a barrister to represent them.

### **Managing the donor's affairs whilst awaiting the outcome of an objection**

An attorney can usually continue to maintain a donor and prevent loss to their estate, but should act with caution. Advice should be sought if you need to go further than this.

### **Appointing more attorneys**

The Public Guardianship Office has no power to appoint more attorneys, or to transfer the power to anyone else.

### **Refusal of registration**

The Court may have to appoint a receiver to manage the donor's financial affairs. They will be supervised by the PGO and check their accounts.

### **Other reasons why registration might not take place**

If the PGO hear from someone who is worried about the suitability of a person as attorney, or about whether the EPA is valid, the Court can make enquiries before making a decision. If this happens, the PGO will tell the attorney and give them the chance to comment on the issues raised. If there are worries that somebody is financially abusing a donor, a letter should be written to the PGO with the details.

Alternatively, please contact us .We will do our best to help.

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