

## **Powers of Attorney**

Enduring powers of attorney first came to be used in the 1970's, but despite almost forty years of use, misunderstandings about them continue to abound.

The purpose of an enduring power of attorney is to permit one or more other persons to act on your behalf with respect to matters of property and finance. Responsibilities typically commence when the person who made the document becomes incapable of managing their own affairs, although in some instances, people choose to authorize their attorneys to assume immediate responsibility. Those responsibilities continue until the person making the documents either recovers (as some do, such as victims of trauma) or dies.

An attorney's principal responsibility is to act in the best interests of the person for whose they have been entrusted. This means making decisions that further the interests of the person under their care. This means not allowing their personal interests to conflict with those of the person who is under their care.

Attorneys under enduring powers of attorney are not lawyers, or at least not usually. Don't let the terminology used in American television shows confuse you. Attorneys are typically family members or close friends. Other than the requirement that the attorney be at least 18 years of age, there are no restrictions on who may act as an attorney.

The fact that there are no restrictions on who may act as an attorney means that people with widely varying skill sets are appointed to act and with differing levels of appreciation for their responsibilities. This often leads to disputes, especially among family members, who themselves may not appreciate the duties and responsibilities of being an attorney.

There is common expectation among family members that the sibling who acts as attorney has an obligation to keep everyone else informed. Personally, I think this view is mistaken. Persons who stand in a fiduciary relationship (that is, a relationship characterized by trust and dependence) generally have a duty to keep confidential whatever information they receive about the person under their care. I don't think there is any doubt that an attorney stands in a fiduciary relationship with the person under their care, so I can see no reason why the general duty of confidentiality applicable to fiduciaries ought not to apply.

Ultimately, attorneys are accountable to the Court, so they are not without oversight. Any person with an interest can apply to the Court for an order directing the attorney to bring in and pass their accounts. Typically, when applications of this sort are made to the Court, the person applying must show some cause why the accounts ought to be brought in and passed. In other words, an accounting is not ordered just for the asking. And with good reason.

Maybe the maker (typically, the parent) didn't want persons other than the attorney to be privy to their financial affairs.

The appointment of an individual as an attorney under an enduring power of attorney is an intensely personal decision by the person who makes the document. In my view, deference ought to be shown to the person who has been chosen on matters of how much, if any, disclosure there is to be about the person's affairs. In instances of abuse or gross neglect, the oversight of the Court can be invoked and appropriate remedies fashioned. In my view, that oversight should be exercised judiciously.