

Why every individual needs an Enduring Power of Attorney...

Why an Enduring Power of Attorney is relevant to you



Many people associate the need for an Enduring Power of Attorney (also referred to as an “EPA”) with old age. However, loss of mental capacity can happen to anyone at any age. Every person should have an Enduring Power of Attorney in the event they lose capacity from a mental condition, temporary illness, learning disability, stroke or other brain injury caused by an unforeseen circumstance.

Every day, people lose control of their property and finances because they fail to consider these circumstances. The experienced lawyers at TLS can help you avoid this.

What is an EPA?

An Enduring Power of Attorney is a legal document, which is used to authorise a person of your choice (“the Attorney”) to handle your financial affairs. It is crucial that you select a person that you know and trust. The Enduring Power of Attorney authorises the Attorney to act on your behalf and make property and financial decisions.

The role of an attorney includes signing documents, paying bills, and managing your financial affairs. These are the types of things that go unmanaged if you do not have an Enduring Power of Attorney in place in the event you become incapacitated, causing unwanted stress for you and your loved ones.

A case example that explains how an EPA works



Sally is a 32-year-old woman who is fit and healthy with no known medical conditions. However, one day Sally collapsed into an unconscious state and doctors later established that she had suffered a stroke due to an underlying brain condition.

Sally’s partner Dave was aware that she was the purchaser in an upcoming settlement for a property transaction. Dave was quick to realise that he did not have authority to effect settlement on Sally’s behalf because he did not have Enduring Power of Attorney to manage her financial affairs. Dave went to his lawyer to seek an Enduring Power of Attorney.

Dave’s lawyer informed him that it was too late to prepare an Enduring Power of Attorney because Sally had already lost mental capacity due to the stroke, and the doctors had declared her unfit to make financial decisions. This resulted in Sally missing the due date for settlement and put her in breach of the sale agreement.

If Sally had an Enduring Power of Attorney, Dave would have been able to complete settlement on Sally’s behalf, and the stress caused by this unforeseen circumstance would have been eliminated.

What if you don't have an EPA in place?

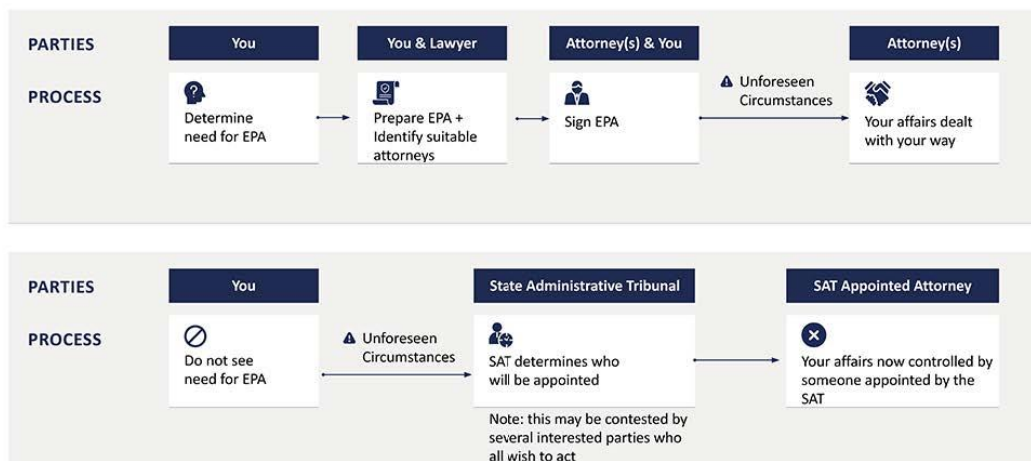
If you do not have an Enduring Power of Attorney and you lose capacity to manage your financial affairs, it will be too late to have a lawyer prepare an Enduring Power of Attorney for you. Legally, you require mental capacity to sign the Enduring Power of Attorney, otherwise it will be invalid.

The alternative to this situation is for a person involved in your life to apply to the State Administrative Tribunal (SAT) to be appointed as your administrator and be granted power to make financial and legal decisions on your behalf.

This can be a difficult and stressful process. Depending on the urgency of the application, an application may not be heard until eight to ten weeks after SAT receives the application. Further, the decision as to who will be appointed your administrator is made by members of the SAT, and the person appointed will be obligated to submit annual accounts to the Public Trustee for auditing. This can add substantial costs.

Having an Enduring Power of Attorney would alleviate this burden and minimise any financial loss that may occur if your ability to make financial decisions was suddenly gone.

What Happens if You Set up an EPA VS if you leave it to chance



What can you do to ensure that in unforeseen circumstances your affairs are managed by your preferred person?

You should make an EPA as soon as possible. An Enduring Power of Attorney ends when you die and then your Will comes into effect. This is why it is common for people to have an Enduring Power of Attorney and Will created at the same time.

The experienced lawyers at TLS can:

- Provide legal advice on your personal requirements and the benefits or risks of making an Enduring Power of Attorney;
- Advise on the procedure for applying to SAT for power to manage an incapable person's affairs; and
- Prepare your Enduring Power of Attorney and Will.