

PRESENTS You & The Law

Why you need an enduring power of attorney

Everyone knows that by the time they reach late middle age, the risk of stroke, dementia, Alzheimer's and other incapacitating illnesses is significantly higher. These sad events can occur suddenly and without warning.

If you haven't planned for this, it can make things very difficult for your loved ones. They will have to apply to court to appoint a representative for you, known as a "committee." This requires sworn evidence from two doctors and a hearing before a judge, and can easily take several weeks and cost thousands of dollars. There can also be fights amongst family members over who should be appointed as your committee.

In contrast, appointing a representative while you still have capacity to do so costs only a few hundred dollars, can usually be prepared within a few days and allows you to select the desired representative(s).

Waiting until infirmity is on your doorstep before planning for this contingency is a mug's game – not unlike trying to time the stock market. If you suffer a sudden loss of capacity, the window for signing legal documents will close and your family will have to take the more expensive court route. Why roll the dice?

The type of document normally used to appoint a representative to handle your legal and financial affairs during periods of incapacity is called an "enduring power of attorney." The representative is called your "attorney." The reference to "enduring" signifies that the appointment does not become invalid after you lose capacity, which would be the case with a conventional power of attorney.

You can appoint more than one attorney, and specify that they must act together, or you can direct that they can act indepen-

dently of each other. You can also designate an alternate attorney.

The power of attorney can take effect immediately, or you can require that a doctor's letter first be obtained confirming you are incapable of managing your affairs. The option you choose will depend on your personal circumstances and those of your designated attorney.

Anyone acting as your attorney is legally obliged to act only in your best interests and to comply with any directions given by you while competent. Your attorney must also provide an accounting of their transactions on your behalf upon request. Despite these legal requirements, powers of attorney are powerful documents capable of being abused, and should therefore never be granted to anyone you don't trust implicitly, or to anyone who is exposed to severe financial pressure that may tempt them to act improperly.

Even if you are already suffering from dementia, you may still have sufficient capacity to execute an enduring power of attorney. The legislation prescribes certain thresholds that must be met, including your general awareness of certain key facts like the approximate value of your assets and the risks inherent in making the appointment. You don't need to be able to remember what you had for breakfast, or the middle names of each of your children.

Preparing for future incapacity should be part of every estate plan. Your lawyer can explain available options and ensure all rules and requirements are followed.

Written by Janice and George Mucalov, LL.B.s with contribution by Milne Selkirk. The column provides information only and must not be relied on for legal advice. Please contact JAMES MACLEAN of Milne Selkirk for legal advice concerning your particular case.

Lawyer Janice Mucalov writes about legal affairs. "You and the Law" is a registered trade-mark. © by Janice and George Mucalov.



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RUN DATE: WED., AUG. 12

PUBLICATIONS: Langley Times **SIZE:** 3x9.5 **COLOUR:** bw

art: rcw **rep:** Torrie

Out: 9:21jy22rcw **Cor:** _