



Public Trust's Anita Mexted has many years of experience helping families with legal and planning issues.

You can send questions for Anita to info@carers.net.nz, or post them to PO Box 133, Mangonui, Far North 0442.

A powerful change

Dear Anita,

In the last issue of *Family Care* you printed an article on changes in the law dealing with enduring powers of attorney. You talked about powers of attorney and enduring powers of attorney – are they the same thing? Maggie, Bay of Plenty

Dear Maggie,

Powers of attorney have been around for quite some time – since Victorian times in fact. The basic principle is that you give someone else the power to act for you and on your instructions. But those original powers of attorney only worked while you were mentally capable of giving instructions. If you became incapable the powers ended, so they had significant limitations in modern times.

New law has enduring powers

To address these limitations, a new law was passed in the 1980s: the Protection of Personal Property Rights Act 1988 (commonly called the triple PR Act for short).

This new Act did several things. It enabled people to set up an 'enduring power of attorney' (this is where you give someone you trust the power to act for you, including if you become mentally incapable of managing your own affairs). Or, if you hadn't already set up these powers, family members or other close loved ones could apply to the courts for permission to act for you if you became mentally incapable.

The difference is a lasting one

The essential difference between the two types of powers is that the older and original 'power of attorney' ends if you become mentally incapable. The newer 'enduring power of attorney' lasts, and allows others to act for you if you lose the capacity to make your own decisions.

In reality we rarely see the older form of powers these days, and the terms 'powers of attorney' and 'enduring powers of attorney' are often used interchangeably to mean the more modern lasting form of attorney.

Two types of powers

The other main difference between the Victorian and modern versions is that there are two types of enduring powers of attorney – one for property and one for your personal care and welfare.

An enduring power of attorney for your care and welfare only comes into effect if you become mentally incapable. You can only appoint one person – and they'll be responsible for decisions such as where you live, what medical treatment you receive, and so on.

An enduring power of attorney for property is quite different. You can appoint more than one attorney (including a trustee organisation such as Public Trust), and can be quite specific about the power given. And it can start or end whenever you want – you don't have to be incapable. Many people set up these powers if they're going overseas, for example, or want help to manage their finances.

New safeguards

On 26 September 2008, the Protection of Personal and Property Rights Amendment Act 2007 came into force. It sets much stricter standards for the setting up of powers and around the duties of attorneys. If you have an existing enduring power of attorney you don't legally need to make any changes, but it may be a good time to review who you've appointed. If you're acting as an attorney, or may do so in the future, it's also a good time to think about how the changes could affect you, and whether you still want to continue in the role.

If you'd like to know more about enduring powers of attorney or the changes to the Protection of Personal and Property Rights Amendment Act 2007, you're welcome to call Public Trust on (0800) 371 471.

Anita

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