**How do you give people the power to act on your behalf?**

When a person who is 18 years of age or over and requires assistance managing their affairs, or is unable to make decisions or look after themselves, the law allows for other people to help that person make decisions in three main ways:

• An ordinary power of attorney,

• Enduring power of attorney, or

• Court orders, including welfare guardianship and property management.

An ordinary power of attorney allows for you to appoint a person (your “attorney”) to look after your property and money. You can give your attorney the power to act for you in all matters related to your property and money, or you can decide that you only want them to look after specific things. Either way, they are always acting under your direction – they cannot go off and take action on your behalf without your permission. This power is only valid while you still have capacity to ‘direct’ your attorney. If you lose mental capacity or die, the power of attorney is no longer valid. You can also change or revoke (take back) this power of attorney at any time as long as you tell your appointed ‘attorney’ and any organisations or companies that know about your power of attorney. You should do this in writing.

An Enduring Power of Attorney (EPOA) is made before you lose capacity. Losing capacity means that a person cannot make or understand the consequences of their decisions, or that they are unable to communicate those decisions. An EPOA allows for you (the “donor”) to plan in advance, and decide who you would like to look after your property and money and/or your personal welfare (the “attorney”). You should only appoint people you trust, who listen to you, and who understand your wishes and feelings. You will need a lawyer to help you create your EPOA. Auckland Disability Law recommends that you make an EPOA before you lose capacity, allowing you to choose the best person to look after your affairs. Otherwise, if you lose capacity, somebody will have to make an application to the Family Court, and this may not end up being the person you would have chosen. The final avenue is Court orders including welfare guardianship and property management.

These options may be available when someone cannot or has not made an EPOA and does not have capacity to make decisions about their welfare or property. Someone will need to apply to the Family Court for an order to be made, depending on the needs of the person who has lost capacity. There are limits to what a welfare guardian or property manager can do. For more information, the Ministry of Justice has a helpful brochure that can be found online:

<http://bit.ly/1H2HGbD>.

Many disabled people, including those with a learning disability live good lives without a welfare guardian or property manager. Instead, they rely on a supportive community, sometimes called a ‘Circle of Support,’ that supports them to make decisions in their life with minimal involvement of the Courts.

If you believe that someone holding Enduring Power of Attorney, welfare guardianship, or property management is misusing their power, you may want to get support to discuss this with them. Or, you can ask the Family Court to review their activities to determine if their power should be revoked. See a lawyer for assistance with this, or talk to CCS Disability Action.

*Thank you to CCS Disability Action Team for allowing us to share this.*