

Your Legal Questions

Jenny Brading
Solicitor



I have recently received a notice advising that my brother is about to register my Mother's Enduring Power of Attorney (EPA) as she has lost capacity. The notice states that I have the right to object to the registration. I do have some concerns. Upon what basis can I object?

If your mother has lost the capacity to manage her own property and finances your brother is obliged to register the EPA with the Court of protection.

You do have the right to object if you disagree with the proposed registration but any objection must be made within 5 weeks from the day that the notice was served upon you and will only be valid if based on one or more of the following grounds:

- That the EPA is not valid as an EPA - eg there is a defect with the document or the person making it lacked capacity
- That the EPA no longer subsists (e.g. if it has been previously revoked by the person making it when they enjoyed capacity)
- That the application is premature because the donor is not yet becoming mentally incapable
- That fraud or undue pressure was used to induce the donor to create the power
- That having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney

Any objection you raise may be copied and sent by the Court of Protection to all interested parties for their comment. You must be able to substantiate any claims that you make as, if the matter cannot otherwise be resolved, there may have to be a formal hearing. Objecting to the registration of an EPA is a serious step that should only be taken after careful consideration and, preferably, following legal advice.

Readers should note that this question relates to the old style EPA and not the new Lasting Powers of Attorney where the situation is similar but does have material differences.

Jenny Brading is a Solicitor & Trust and Estates Practitioner and a member of Solicitors for the Elderly.

**Direct dial 01934 637931
brading@powellslaw.com**