The extrajudicial protection mandate
What will happen when you are no longer capable of making decisions?

You might find yourself in a situation where your physical or mental health temporarily or permanently means that you can no longer make important decisions about your assets for yourself. An extrajudicial protection mandate gives you the chance to prepare for this eventuality and thus gives you protection.

How does it work? How do you set up a mandate? What should you take into account when setting up your extrajudicial protection mandate? ING explains what it involves.

What does it cover?

The extrajudicial protection regime was established in Belgium by the Law of 17 March 2013 (in force since 1 September 2014). It aims to enable those who so wish to prepare for any future incapacity to make decisions or manage their affairs.

While you have all of your mental faculties, you can set up an extrajudicial protection mandate through which you authorise one or more people of your choosing, known as the authorised representative(s), to manage your assets immediately or from the moment when you are unable to do so yourself, even temporarily (for example in the event of dementia or mental illness, or due to an accident or coma, etc.).

Since 1 March 2019, the scope of the extrajudicial mandate has been extended: it can now cover not only acts relating to assets (selling items, making gifts, paying bills, etc.), but also acts relating to people (for example, choosing the care provided, choosing a place of residence, etc.).

When does it come into effect?

Often, the extrajudicial protection mandate comes into effect when the principal is no longer capable of carrying out certain acts. You decide in advance how the incapacity must be determined (for example in the authorised representative’s opinion or in the opinion of two independent doctors).

On the day when the incapacity is determined, the extrajudicial protection mandate comes into effect “automatically” and the authorised representative can implement it. This means that no action needs to be taken by a judge.

However, contrary to what is sometimes thought, it doesn’t have to come into effect when you are no longer capable of making decisions; it can also come into effect immediately if you so desire.
What happens if the authorised representative abuses or fails to comply with the mandate?

Above all, it must be understood that the authorised representative is legally obliged to involve the principal as much as possible in all decision-making.

While you are capable, you can withdraw your mandate at any time. You can then give a new mandate to another person if applicable.

If anybody notices any abuse of the mandate when you are no longer capable, they can contact the judge directly, who may decide to bring the extrajudicial protection regime to an end and appoint an administrator. The case would then be subject to the judicial protection system. You can make a declaration of preference for the appointment of this administrator, or of a trusted person who will act as an intermediary between you and your administrator.

In practice, it is strongly recommended that your mandate is drawn up by a notary. A notary will ensure that your interests are protected and help you with the wording and setting out the various clauses. In addition, a notarised mandate is compulsory for the authorised representative to be able to perform important acts that require the notary’s involvement (such as for example selling real estate, gifts, amendments to marriage contracts, etc.). Most notaries charge between 300 and 500 euros* to draw up and register an extrajudicial protection mandate.

In summary, what are the advantages?

- It lets you choose the trusted person who will manage your assets when you are no longer able to do so.

- It lets you define principles that the authorised representative must apply in the performance of their duties and therefore determine how your assets should be managed.

- It can be a tool for preparing your estate even in the event of incapacity.

- It is quick to set up and makes it possible to avoid having to go through the judicial protection regime.

What are the formalities?

In theory, you can choose to either draw up the extrajudicial protection mandate as a private deed, or have it drawn up by a notary. The mandate must be set out in writing and registered on the central register of mandate contracts (managed by the Fédération Royale du Notariat belge) to be valid. If it is not registered in this way, the extrajudicial protection mandate is worthless.
Would you like more information?
Do you have any questions?
If so, please get in touch with your trusted ING contact person.

*This fee is provided merely as a guide and depends on the notary.*