

What is an Enduring Power of Attorney?

- An Enduring Power of Attorney allows a person (the Principal) to authorise someone else to make decisions on their behalf (the Attorney).
- The value of an Enduring Power of Attorney is that it remains valid upon the Principal losing decision making capacity (this can be contrasted with a Non-Enduring Power of Attorney). Therefore, the affairs of that Principal can be maintained when they are no longer in a position to attend to such matters themselves.

When should an Enduring Power of Attorney be entered into?

- It is good practice to organise an Enduring Power of Attorney early notwithstanding there may be no immediate risk that may warrant its application.
- An Enduring Power of Attorney can only be made when the Principal has decision making capacity. If the Principal no longer has capacity and their affairs need to be attended to, it is likely that a VCAT application would be required for the appointment of an administrator or guardian (as the case may be). That can be quite an expensive, long and timely process that can be avoided by having a valid Enduring Power of Attorney in place.

What things can an Attorney do?

- An Enduring Power of Attorney is an extremely powerful document in that it allows for the Attorney to stand in the shoes of the Principal and do on behalf of the Principal anything the Principal can legally do themselves.
- However, the Principal can provide for in the Enduring Power of Attorney document the matters that the Attorney is authorised to attend to. Such as:
 - Both financial and personal matters;
 - Financial matters only;
 - Personal matters only;
 - Specified financial or personal matters.
- Further, the Principal can specify when the Attorney is authorised to act. For instance, the appointment can become operative upon the Principal losing capacity. However, it should be kept in mind that the appointment should not be unduly restrictive so as to limit its practical application in circumstances that may not yet be foreseeable.
- If no start date is specified, the appointment is effective immediately and the Principal can oversee the use of the Attorney's power and can direct the Attorney how to act (if the Principal still has capacity).

Who should be appointed as an Attorney?

- Given the powerful nature of the document, a Principal should only appoint an Attorney they trust and would believe them to be a suitable fit for the role. Particular regard should be had to various practical matters, for instance, if the Principal resides in Melbourne but appoints a relative living in London, it may undermine the effectiveness of the document. Further, if the Principal appoints an Attorney that has their own health issues it may ultimately restrict the Attorney's ability to act.
- Multiple attorneys can be appointed. In the event there is more than one appointed Attorney, the Principal can dictate whether the Attorneys are to act jointly (i.e. together) or severally (i.e. independently of each other).

Have any questions?

We are more than happy to assist regarding any of the above matters.

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