

ENDURING POWER OF ATTORNEY

WHAT IS AN ENDURING POWER OF ATTORNEY?

An enduring Power of Attorney is a legal document whereby you appoint another person to make decisions about your property and financial affairs. You can appoint a Trustee Company instead of an individual.

Your Attorney is the person you nominate to conduct your financial affairs on your behalf. Your Attorney's powers can be unlimited or restricted depending on your requirements. An unrestricted form would mean that your Attorney could do anything that you yourself could lawfully do. You should only appoint someone you can trust.

An 'enduring power of attorney' is one which specifically provides that it will continue to be effective even if you become incapacitated whereas a general power of attorney comes to an end when you lose mental capacity.

An enduring power of attorney must be witnessed by certain specified witnesses such as a solicitor or registrar of a Local Court.

WHY SHOULD I MAKE AN ENDURING POWER OF ATTORNEY?

If you lose mental capacity it is too late to make an enduring power of attorney so there may be nobody legally able to manage your financial affairs. If this were to occur then it may mean that the Guardianship Tribunal or the Supreme Court of NSW will need to appoint a financial manager over your affairs.

Giving a power of attorney is done by most people as a precautionary matter so that their affairs can be conducted by someone sensitive to their needs if they become incapacitated and are unable to attend to their own affairs. Most people tend to appoint their spouse as first choice then one or more of their children as back-up Attorneys. Care should be taken not to allow one child unrestricted control over your financial affairs.

It is advisable to have a substitute or second choice attorney in case your first choice dies or becomes incapacitated.

CAN I REVOKE MY ENDURING POWER OF ATTORNEY?

Yes. An enduring power of attorney can be revoked at any time and ceases to be valid on your death. It is advisable to notify the attorney in writing that you have revoked the power of attorney.

WHAT ARE THE DUTIES AND RESPONSIBILITIES OF MY ATTORNEY?

Your attorney must:

- always act in your best interests,
- avoid conflicts of interests between their affairs and your financial affairs,
- act in accordance with any restrictions you have placed on their powers and authority, and
- keep accurate and proper records of their dealings with your finances or property.

IS THERE ANYTHING AN ATTORNEY CANNOT DO FOR ME?

An attorney **cannot**:

1. vote for you at State or Federal elections,
2. change your Will or
3. make medical or lifestyle decisions for you.

To make medical or lifestyle decisions you need to appoint an enduring guardian. This is a separate document to the enduring power of attorney. Many people complete both documents at the same time.

DO I NEED TO REGISTER MY ENDURING POWER OF ATTORNEY?

If your attorney will use the document to deal with real estate that you own in NSW then it must be registered with Land and Property Information.

It need not be registered immediately as it can be registered years later.

WHAT IF I AM THE SOLE DIRECTOR OF A FAMILY COMPANY?

It is recommended that you have prepared a Corporate Power of Attorney as your personal Power of Attorney cannot be used for the company's affairs. A directorship is a personal office and as such your role as a director cannot be delegated to your Attorney under the Enduring Power of Attorney.