

INFORMATION ON ENDURING POWERS OF ATTORNEY

What is a Power of Attorney?

A Power of Attorney is given by the Donor (the person granting the Power) and empowers another person, known as an Attorney to act on your behalf. It is simply an agreement that gives someone else power to sign documents and make decisions on your behalf whilst you are still alive.

What is an Enduring Power of Attorney?

Recent changes have been made to legislation regarding Enduring Powers of Attorney (“EPA”) in Queensland and adults can now formally appoint an attorney to make personal and health care decisions on their behalf as well as financial decisions.

An EPA is an agreement that endures even after the donor becomes incapable of making decisions and continues until it is revoked or the donor dies. The donor can only revoke an EPA while they still have capacity.

The new Powers of Attorney Act (“the Act”) extends the powers of an attorney to include personal matters such as with whom you will live, where you will live and day to day issues like diet and dress and the type of health care you will receive (such as consent or refusal of certain treatments). Also you can appoint different attorneys to make decisions relating to financial matters and personal/health matters.

You may already have an EPA made under the Property Law Act, but this document would not authorise your attorney to make personal and health care decisions on your behalf. If you do have the older form of EPA (generally those made pre 1998) you should arrange to have it updated.

If you lose capacity to make decisions or handle your affairs your attorney will administer your affairs in accordance with any directions you specifically make in the document. If you haven't been specific your attorney will exercise their discretion when acting on your behalf, but subject to the Act and the duty to act in your best interests at all times.

It is advisable to have an EPA especially if travelling overseas for an extended period of time. It is also a good idea to have such a document to cover the unfortunate circumstance of the Donor becoming ill or injured so that he is unable to deal with his personal affairs.

Your EPA will only need to be registered with Land Titles offices if the attorney is required to deal with real property.

Remember you cannot as a company director appoint someone to be your Attorney to look after company affairs; the company must appoint its own Attorney.

What is a General Power of Attorney?

A General Power of Attorney ("GPA") differs from an EPA in that it only extends to financial matters and will end automatically if you lose capacity (i.e. it will not endure). A GPA can be drafted for a limited purpose and/or limited time. You can entrust the attorney with as much or as little power as you wish.

These powers are useful for business, where for example one partner has to go overseas. He can appoint another partner, or third party, as attorney to sign documents in his absence, relating solely to the business.

Another example where a GPA is useful is if you were buying land but had to go overseas. You could appoint an attorney under a GPA to sign all documents relating solely to the land purchase and only until you return (a date can be specified).

New South Wales

Following the recent changes in legislation the provisions covering Powers of Attorney has substantially changed. If you have a New South Wales Power of Attorney we strongly advise you to review it.

Completion of Instruction Sheet

We have provided on our website an instruction sheet for the preparation of your EPA. However, completion of this instruction sheet should only be carried out if your affairs are simple, straight forward and not out of the ordinary. If you have any queries whatsoever regarding your EPA please do not hesitate to contact us.

From the information provided by you we will draft your EPA. If there are any queries or you have not completed an instruction we shall contact you in order to ensure that you have provided us with all necessary information for the accurate completion of your documents.

If you wish clarification on a particular issue or wish to seek further advice before progressing with your EPA please contact **Noel Duffy** direct on:

Business: 07 5502 3102
Mobile: 0422 994 151
E-mail: nduffy@duffylaw.com.au
Website: www.duffylaw.com.au