

## ESTATE PLANNING

### Enduring Powers of Attorney

#### What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document which gives another person the power to deal with financial, personal and health decisions on your behalf.

#### Is an Enduring Power of Attorney as important as a Will?

You may not always be able to make decisions when you need to. You may be too ill to make choices about your medical treatment or you could suffer a disability that prevents you from communicating your wishes to others.

An Enduring Power of Attorney is an important legal document that you can prepare to give someone else the power to make financial, personal and health decisions on your behalf. By making an Enduring Power of Attorney, you will have peace of mind that the right person(s) will be able to make decisions on your behalf if you are unable to do so.

#### Who should I appoint as my Attorney?

The person(s) appointed as your attorney will be able to make decisions that have the same legal effect as decisions you make for yourself. Accordingly, you should appoint someone who you trust, is willing to take on this additional responsibility and you feel would make decisions in your best interests.

For financial matters, you should consider someone who is responsible with their own money and understands financial matters. For personal and health matters, you should consider family member(s) or a close friend(s) who understand your personal and health care needs and wishes.

You may appoint as many attorneys as you think are necessary to act for you and you can appoint a different attorney for financial matters than that appointed for personal and health matters. However, whoever you decide should be your attorney must be over 18 years and not your paid carer (a person receiving a carer's pension is not regarded as a paid carer). A bankrupt cannot be appointed as your attorney for financial matters.

#### What types of decisions can an Attorney make?

The types of decisions that an attorney can make for you include:

- deciding personal matters such as where you live and who you have contact with;
- agreeing to most health care issues including medical and dental treatment and withdrawing or withholding of life sustaining measures;

- controlling your finances, for example, they can collect your income, attend to banking, pay bills and taxes, sell or rent your home if the need arises and use your income to pay for your needs or alternatively, invest your money.

### **When does the Attorney's power begin?**

An Enduring Power of Attorney for financial matters can come into effect immediately or on a particular date or event (such as incapacity) that you elect. The power will continue even if you lose capacity to make decisions for yourself.

For personal and health matters, your Enduring Power of Attorney will only come into effect if you no longer have the capacity to make these types of decisions for yourself.

### **What happens if I don't have an Enduring Power of Attorney?**

It may become necessary for the Public Trustee to step in to manage your financial affairs. In addition, health care decisions could be made by your statutory health attorney (who could be a spouse, carer, close friend or relative).

Alternatively, a person can apply to the Queensland Civil and Administration Tribunal (QCAT) to be appointed as your guardian (for personal and health matters) or your administrator (for financial decisions).

### **How to do I make an Enduring Power of Attorney?**

An Enduring Power of Attorney must be made in the approved form. In order to be valid, your Enduring Power of Attorney must also comply with strict witnessing requirements.

You should speak to a lawyer about making an Enduring Power of Attorney, and in particular:

- who should be appointed as your attorney, and if more than one, how they should make decisions;
- the scope of power given to your attorney;
- any additional clauses (conditions or requirements that should be added to the standard form to suit your personal circumstances); and
- when the Enduring Power of Attorney should commence.

### **What if I change my mind?**

You can cancel your Enduring Power of Attorney at any time provided that you still have the capacity to do so.

You should also inform the previous attorney(s) in writing that their appointment has been cancelled, to make sure they don't continue to make decisions for you.

### **What should I do next?**

If you would like more information, please feel free to contact a member of our Estate Planning and Asset Protection Team on (07) 5597 3366 or at [law@belllegal.com.au](mailto:law@belllegal.com.au).

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