

Enduring Powers of Attorney: Pitfalls and Urban Myths

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GOLD COAST CITY LAWYERS

PRESENTED BY

John Fradgley and Dan O'Connor
Wills, Trusts and Estate Planning

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Back to the basics:
What is an Enduring Power of Attorney?

- A legal document giving decision making power to another person(s)
- For financial **and** personal & health matters, will endure even after the principal loses capacity
- How is it different from a General Power of Attorney?

Back to the basics:
What is an Enduring Power of Attorney?

- Revoking an EPOA?
 - Only when the principal has capacity
 - Or else... QCAT
- Limitations?
- Duties?
- Eligibility?

So what legislation applies?

- *Powers of Attorney Act 1988*
- *Trusts Act 1973*
- *Guardianship and Administration Act 2000*

- Don't forget, every State and Territory is different!

Super Duper: Superannuation and EPOAs

- Individuals
- Self-Managed Super Funds
 - Trustee or Director of Corporate Trustee?
 - *Superannuation Industry (Supervision) Act 1993*

Ties that bind: Binding Death Benefit Nominations

- What can an attorney do?
 - Make, revoke, amend or change?
- Standard practice?
- Minimising liability!

Avoiding Conflict Transactions

- Duty to avoid conflicts of interest, but...
- What's allowable under the law?
 - Gifts to family or close friends
 - Gifts to charity
 - Reasonable financial needs of dependents
 - Attending to joint property
- What else?

The most commonly used provisions

- Allowing for BDBNs
- Allowing for appropriate accommodation and care
- Allowing for entry fees to accommodation

Remember, it's better to be careful than to be sorry.

Partnership Down: Business Partners and EPOAs

- Acting as partner
- Dissolving partnership
- What about Partnership Agreements and Buy/Sell Agreements?

And... ACTION: Directors and EPOAs

- Loss of capacity = loss of office
- Attorney CANNOT act as director for principal
- But...
 - Shareholder voting rights
 - Appointing alternative or successor directors

Look at the company constitution!

**Sharing is caring:
Shareholders and EPOAs**

- Attorneys have the power to make decisions about a principal's property and financial affairs
- Therefore...

**In EPOAs we trust: Trusts and EPOAs
Beneficiaries?**

- Attorneys have the power to make decisions about a principal's property and financial affairs

**In EPOAs we trust: Trusts and EPOA
Trustees?**

Only SMSFs

In EPOAs we trust: Trusts and EPOA Appointors?

- Succession by deed
- Attorneys are default appointors
- Appropriateness?

What have we learned?

- Complicated but vital!
- Every detail is important
- If you are unsure, it is safer to ask for help than live to regret it



Thank you for your time
