

Some handy information on Enduring Powers of Attorney

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPOA) is a document that authorises a person (an Attorney) to act on another person's behalf (the Donor) in relation to the Donor's financial and business affairs. An Attorney is legally authorised to make financial decisions for the Donor and to sign documents to give effect to those decisions.

Who can be appointed an Attorney?

An Attorney can be any person over 18 who has the mental capacity to make decisions for another and is usually a family member, a friend or a professional adviser. Multiple Attorneys can be appointed to act either in order of preference, jointly or separately.

When can an EPOA be used?

An EPOA may authorise an Attorney to act from the moment the EPOA is signed, or may only become operable once the Donor loses the mental capacity to make his or her own decisions.

Once an Attorney has accepted the appointment he or she must continue to act until either the Donor revokes the Attorney's authority, or the Attorney's authority is removed by the South Australian Civil and Administrative Tribunal (SACAT) or the Supreme Court. An Attorney's right to act ceases upon the death of the Donor.

What are an Attorney's responsibilities?

An Attorney must act with due diligence and in the best interests of the Donor at all times and must keep records of all transactions. An Attorney should be trustworthy as they will have significant power over the Donor's assets.

An EPOA only covers financial and business matters, not lifestyle or medical decisions which are covered under an Advance Care Directive.

What if there is no Attorney?

If a person becomes mentally incapacitated and he or she has not validly appointed an Attorney, SACAT may appoint the Public Trustee, a family member, friend or an independent person to administer the person's affairs.

Mellor Olsson has experienced practitioners who can provide advice on which document might be appropriate to suit your individual circumstances.

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