



Enduring Power of Attorney

Have you ever considered what would happen if you became mentally or physically incapacitated?

An Enduring Power of Attorney is an important legal document you prepare to give someone else power to make financial and personal and/or health decisions on your behalf.

Should you lose capacity and not have an Enduring Power of Attorney; then an application to a body known as the Queensland Civil and Administrative Tribunal (QCAT) might have to be made for the appointment of a person, often the Public Trustee, who would then deal with the day to day administration of your financial affairs and a person called the Adult Guardian would be appointed to make decisions concerning your health and personal matters.

There are several disadvantages to having the Public Trustee or the Adult Guardian administer your financial affairs or your personal or health matters, not the least of which is financial. The Public Trustee will charge fees for attending to the administration of your financial affairs. People often think that these matters are best attended to by other family members or friends who are familiar with your affairs and that can best be done by executing an Enduring Power of Attorney appointing family members or friends to attend to your personal, health or financial matters.

An Enduring Power of Attorney is a legal document authorizing another person, e.g. your wife, your children or some other

trusted friend to act on your behalf for your affairs if you were to become incapacitated by accident or illness. That person is known as your "Attorney".

You can give your Attorney the power to decide about personal matters such as where you live, who you have contact with and consent for medical/dental treatment.

You can give your Attorney power over your finances. For instance, your Attorney may collect your income, do your banking, pay your bills and taxes, sell or rent your home if you need the proceeds to pay for Aged Care, use your income to pay for your needs, or invest your money.

Your appointed Attorney must be eighteen years of age or more:

- Must not be your Health Care provider (e.g. your doctor);
- Must not be a bankrupt; or
- Must not be a paid Carer (receiving a Carers pension does not stop a person from being an Attorney).

It is most important to choose someone that you have absolute trust and confidence in, who is

capable of looking after your affairs as you would wish them to be looked after yourself.

To execute an Enduring Power of Attorney appointing an Attorney you must be fully able to understand what that appointment means.

An Enduring Power of Attorney remains in full force and effect until you die or until it is revoked by you. An Enduring Power of Attorney may be revoked at any time provided you are still mentally competent. An Enduring Power of Attorney is also revoked if you are divorced, if your Attorney was your spouse or if your Attorney dies or loses decision making capacity or becomes unqualified e.g. a bankrupt.

For personal matters, your Attorneys power begins only if and when you become incapable of making decisions.

For financial matters, your Attorneys power begins whenever you want. You can choose to give your Attorney immediate power or at a particular time in the future. However, if you don't specify a time, your Attorney can make decisions on your behalf

immediately the Power of Attorney is executed.

Usually there is no need to pay your Attorney unless you appoint a professional person or an organization to act as your Attorney for financial matters.

Appointing an Attorney does not prevent you from continuing to make your own decisions while you are capable of doing so.

You may appoint more than one Attorney.

Also, you may appoint an Attorney for financial and personal matters and a different Attorney for health matters.

It is best, to avoid future conflict, that you appoint as your Attorneys people who can work well together with your best interests at heart. If your Attorneys cannot work together and agree on decisions then your Enduring Power of Attorney may not be effective.

Your Attorney must act honestly and with care to recognize your rights to confidentiality and take into account your existing supportive relationships, values and cultures and generally act in accordance with the principles

of the *Powers of Attorney Act 1998*.

In relation to health care, your Attorney must:

- Ensure that any decisions made for you contribute to your health and wellbeing;
- Choose the least intrusive method of treatment when there is a choice;
- Take into account your views and wishes; and
- Take into account the advice of your doctor or other health care providers.

In relation to financial matters, an Attorney must:

- Keep records and accounts of dealings and transactions;
- Keep your property separate from that of the Attorney unless it is owned jointly; and
- Not give away your property and make only reasonable gifts for birthday or Christmas presents or donations that you would normally make yourself.

You can also restrict the powers that your Attorney has. For instance, you might instruct your Attorney to make financial decisions for you only after a certain event or a specific time.

You can change your Attorney(s) at any time whilst you still have capacity.

There have been cases where Attorneys have abused their powers by spending assets unwisely or selling the family home inappropriately. However, they are in a minority. That is why you must choose the persons you appoint as Attorneys wisely. They must be people you have absolute trust and confidence in.

We strongly recommend that everyone consider making an Enduring Power of Attorney. It enables you to choose the person or persons who will handle your personal, health and financial affairs should you be ever unable to do so yourself and they will be able to do this without complications. This will save a great deal of trouble, worry and expense if you were ever to become mentally incompetent or unable to manage and attend to your own affairs.

Please call Malcolm Bougoure, Shane Mead, Glenn Shipway, Natalie Lovett or Rebecca Perry on 07 4662 2033 for more information, or email them on info@carwin.com.au.